

No. 12498

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United States  
Court of Appeals  
for the Ninth Circuit.

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GEORGE T. GOGGIN, as Receiver of the Estate  
of Salsbury Motors, Inc., Debtor,

Appellant,

vs.

BANK OF AMERICA NATIONAL TRUST AND  
SAVINGS ASSOCIATION,

Appellee.

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Transcript of Record

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Appeal from the United States District Court  
Southern District of California,  
Central Division.

FILED  
JUN 16 1950

PAUL P. O'BRIEN,  
Clerk



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## INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Agreement of Indemnity of Northrop Aircraft, Inc., and Order of Court Approving Same...	68
Amended Petition of Receiver for an Order Subordinating Claims of Bank of America..	92
Appeal:	
Appellant's Designation of Record on.....	153
Notice of .....	152
Appellant's Designation of Record on Appeal..	153
Appellant's Designation of Record to Be Printed .....	184
Appellee's Designation of Record to Be Printed	188
Approval of Debtor's Petition and Order of Reference Under Section 322 of the Bank- ruptcy Act .....	19
Certificate of Clerk.....	179
Consent by Creditor to Second Amended Plan of Arrangement .....	56
Debtor's Proposed Second Amended Plan of Arrangement .....	29

INDEX	PAGE
Findings of Fact, Conclusions of Law, and Order Allowing Claim.....	166
Hearing Re Motion of Receiver to Reconsider Ruling on Motion of Bank of America Ob- jecting to the Jurisdiction of the Bankruptcy Court Re Subordination Hearing.....	155
Hearing in Re Objections to Claim of Bank of America .....	157
Hearing Re Objections to Proposed Order on Petition of Receiver for Order Subordinating Claims of Bank of America and on Supple- ment to Petition Thereto.....	161
In Proceedings Under Chapter XI, Section 322, of the Bankruptcy Act, Proof of Par- tially Secured Debt.....	124
Exhibit A—Promissory Note Dated Feb. 13, 1946 .....	127
B—Promissory Note Dated Feb. 13, 1947 .....	129
C—Promissory Note Dated June 27, 1946 .....	130
D—Promissory Note Dated July 16, 1946 .....	132
E—Promissory Note Dated August 1, 1946 .....	133
F—Promissory Note Dated August 15, 1946 .....	134
G—Deed of Trust.....	135

INDEX	PAGE
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	152
Notice of Motion by George T. Goggin, as Receiver, to Reconsider Ruling on Motion of Bank of America Objecting to the Jurisdiction of the Bankruptcy Court Re: Subordination Hearing .....	81
Objections of Petitioner on Review to Proposed “Order Denying Petition for Review in Re Petition for Order Subordinating Claims of Bank of America”.....	148
Objections of Receiver to Proposed “Order on Petition of Receiver for Order Subordinating Claims of Bank of America and on Supplement to Petition Thereto”.....	86
Order Confirming Debtor’s Second Amended Plan of Arrangement Under Chapter XI of Bankruptcy Act .....	40
Exhibit A—Second Amended Plan of Arrangement .....	45
Order Denying Petition for Review in Re Petition for Order Subordinating Claims of Bank of America .....	150
Order on Petition of Receiver for Order Subordinating Claims of Bank of America and on Supplemental Petition Thereto.....	83
Order to Show Cause Re Bank of America....	67

INDEX	PAGE
Petition of Debtor.....	2
Exhibit 2—Statement of Affairs.....	9
Petition of Receiver for Order Subordinating Claims of Bank of America.....	58
Petition for Review of Order of Referee Dated March 19, 1949, on Petition of Receiver for Order Subordinating Payment of Dividend on Claims of Bank of America.....	107
Referee's Certificate on Review.....	20
Release and Satisfaction of Indemnity Agree- ment .....	76
Response to Order to Show Cause Re Petition of Receiver for Order Subordinating Claims of Bank of America National Trust and Sav- ings Association .....	79
Statement of Points Upon Which Appellant Intends to Rely.....	183
Supplement to Petition of Receiver for Order Subordinating Claims of Bank of America..	63

## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

GENDEL & RASKOFF,

810 James Oviatt Bldg.,

617 S. Olive St.,

Los Angeles 14, Calif.

For Appellee:

HUGO A. STEINMEYER,

ROBERT H. FABIAN,

650 S. Spring St.,

Los Angeles 14, Calif.

In the District Court of the United States, Southern  
District of California, Central Division

No. 45207-B

In Proceedings for an Arrangement  
In the Matter of:

SALSBURY MOTORS, INC., a California Corporation,

Debtor.

### PETITION OF DEBTOR

To the Honorable Judges of the District Court of  
the United States, for the Southern District  
of California, Central Division:

This petition of Salsbury Motors, Inc., a California corporation, hereinafter called "Debtor," having its principal place of business in the City of Pomona, County of Los Angeles, State of California, and engaged in the business of manufacturing and selling motor scooters, gasoline engines, in-plant trucks, and related products, respectfully represents:

#### I.

Debtor, a California corporation, has had its principal place of business in the County of Los Angeles, State of [2\*] California, within the above jurisdictional district for the six months immediately preceding the filing of this petition.

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\*Page numbering stamped at bottom of page of original Transcript of Record.

## II.

No bankruptcy proceedings initiated by a petition by or against Debtor are now pending to the Debtor's knowledge and belief.

## III.

Debtor is insolvent and proposes an arrangement with its creditors pursuant to the provisions of Chapter XI of the Act of Congress entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States," as amended (hereinafter referred to as the "Bankruptcy Act").

The provisions of the arrangement proposed by Debtor are set forth in the Plan of Arrangement attached hereto marked Exhibit 1 and by this reference incorporated herein as though set forth in full.

## IV.

The creditors affected by the Plan of Arrangement are divided into three classes: Bank of America National Trust and Savings Association as the holders of secured notes of the Debtor; Debtor's unsecured creditors having claims in excess of \$500; and Northrop Aircraft, Inc., as the holder of unsecured notes of the Debtor.

## V.

The schedule hereto annexed marked Schedule A and verified by the oath of Debtor's vice-president contains a full [3] and true statement of all its debts at June 30, 1947, and so far as it is possible to ascertain, the names and places of residence of



its creditors and such other statements concerning said debts as are required by the provisions of the Bankruptcy Act. As soon as possible after the filing of this petition Debtor will file supplemental schedules bringing such schedules down to the date of filing of this petition.

#### VI.

The schedule hereto annexed, marked Schedule B, and verified by the oath of Debtor's vice-president, contains an accurate inventory of all its property, real and personal at June 30, 1947, and such further statements concerning said property as are required by the provisions of the Bankruptcy Act. As soon as possible after the filing of this petition Debtor will file supplemental schedules bringing such schedules down to the date of filing of this petition.

#### VII.

The schedule hereto annexed, marked Schedule C, sets forth a statement of the executory contracts of Debtor.

#### VIII.

The statement hereto annexed, marked Exhibit 2, and verified by the oath of the Debtor's vice-president, contains a full and true statement of its affairs as required by the provisions of the Bankruptcy Act.

#### IX.

That hereto annexed, marked Exhibit 3, certified by [4] an assistant secretary of the Debtor, is a



full, true and correct copy of a resolution adopted by Debtor's Board of Directors on August 19, 1947, authorizing the filing of this petition.

### X.

Debtor's creditor, Bank of America National Trust and Savings Association, shortly before the filing of this petition exercised its alleged right of set-off and applied the money in Debtor's bank accounts with said bank to the indebtedness owing by Debtor to said bank represented by promissory notes of the Debtor aggregating approximately \$750,000 in principal amount, which are secured by a trust deed on buildings and a part of the land constituting Debtor's manufacturing plant in Pomona, California. Debtor has consequently been compelled drastically to curtail its operations and intends to stop all manufacturing operations not later than Friday, August 22, 1947, and Debtor does not propose to incur any additional indebtedness without the approval of the Court in this proceeding, except indebtedness necessary to the preservation of Debtor's properties. However, Debtor has been negotiating with prospective purchasers of Debtor's business and assets and is hopeful that during the pendency of these proceedings Debtor's Plan of Arrangement submitted herewith may be consummated.

Wherefore, Debtor prays that proceedings may be had on this petition in accordance with the provisions of Chapter XI of the Bankruptcy Act and without limitation of such general power:

1. That the Court accept this petition for the purpose of subjecting the Debtor, its property and its creditors to the [5] jurisdiction of this Court;

2. That during the pendency of these proceedings all creditors and other persons be enjoined from instituting or prosecuting, or continuing the prosecution of any actions, suits, or proceedings, at law or in equity, against Debtor, and from levying any attachments, executions or other writs or processes upon or against Debtor or any of its assets or properties, or from taking or attempting to take into their possession any of the assets or properties of Debtor;

3. That during the pendency of these proceedings Debtor be authorized to remain in possession of its properties, and to do all things necessary to carry out the provisions of the Plan of Arrangement if confirmed, subject, however, at all times to the regulation and control of this Court;

4. That notice be given to creditors fixing a date for the meeting of creditors;

5. That this petition be accepted by the Court as Debtor's application for the confirmation of the arrangement proposed by the Plan of Arrangement, and that the hearing upon said application for confirmation and of any objections thereto be set at such time as may appear appropriate to the

6. That Debtor be ordered to print and mail Court;

to the persons entitled thereto under Chapter XI of the Bankruptcy Act a copy of the notice of meeting of creditors, said notice to be in a form approved by this Court and annexed to a copy of said order, and to be accompanied by a copy of the Plan of Arrangement and a summary of the Debtor's assets and liabilities as shown by the schedules annexed to this petition as the same may be hereafter supplemented;

7. That Debtor shall have such other and further relief [6] as shall be necessary and proper in the premises.

Dated: August 20, 1947.

SALSBURY MOTORS, INC.,

By /s/ E. F. SALSBURY,  
Vice-President.

O'MELVENY & MYERS and  
By /s/ GRAHAM L. STERLING, JR.,  
Attorneys for Petitioner. [7]

State of California,  
County of Los Angeles—ss.

E. F. Salsbury, being duly sworn, deposes and says:

That the Petitioner in the within-entitled action is a corporation, and that affiant is an officer thereof, to wit, the Vice-President, and makes this verification for and on behalf of said corporation.

That affiant has read the foregoing Petition and

knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters he believes it to be true.

/s/ E. F. SALSBUURY.

Subscribed and sworn to before me this 20th day of August, 1947.

[Seal] /s/ RUBY E. SLOANAKER,  
Notary Public in and for the County of Los Angeles, State of California. [8]

# EXHIBIT No. 2

## Statement of Affairs

(Form No. 3)

(For Bankrupt or Debtor engaged in business)

(Instructions: Each question herein must be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet properly identified and made a part hereof, should be used and attached. If the Bankrupt or Debtor is a partnership or a corporation, the answers should be made on behalf of such partnership, or corporation, and the statement should be verified by a member of the partnership or a duly authorized officer of the corporation.)

To the Honorable.....Judge of the District Court of the United States for the  
.....District of.....Division:

The Petition of Salsbury Motors, Inc., of 1201 E. Lexington Ave., City of Pomona in the County of Los Angeles, District of the State of California, and by occupation manufacturer of motor scooters, turret trucks, small engines.

Respectfully Represents:

1. That the Petitioner is now engaged in the business of manufacturing motor scooters, etc., under the name of Salsbury Motors, Inc., at the address 1201 E. Lexington Ave., Pomona, Calif.

That the Petitioner commenced such business on or about the date Dec. 7, 1944.

That during the six years immediately preceding the filing of the original Petition herein, the Petitioner was engaged in the businesses, at the addresses and with the partners, joint adventurers or other associates, as follows:

From (date):	To (date):	Nature of Business:	Address of Business:
Nov. 30, '42	Dec. 7, '44	Aircraft	4550 E. 50th St., Los Angeles, Calif.
Dec. 7, '44	July 1, '46	Motor Scooters, etc.	4464 District Blvd., Los Angeles, Calif.
July 1, '46	Present	Motor Scooters, etc.	1201 E. Lexington Ave., Pomona, Calif.

2. That during the two years immediately preceding the filing of the original Petition herein, the books of account and records of the Petitioner have been kept by or under the supervision of:

From (date):	To (date):	Name of Bookkeeper:	Address of Bookkeeper:
8-1-45	12-31-46	G. R. Case	1201 E. Lexington Ave., Pomona, Calif.
1-1-47	8- -47	R. J. Pagen	1001 E. Broadway, Hawthorne, Calif.

That during the two years immediately preceding the filing of the original Petition herein, the books of account and records of the Petitioner have been audited by:

Date of Audit:	Name of Auditor:	Address of Auditor:
12-31-44	Arthur Young & Co.	629 S. Hill St., Los Angeles, Calif.
7-31-46	Ernst & Ernst	548 S. Spring St., Los Angeles, Calif.

That the books of account and records of the Petitioner are now in the possession of R. J. Pagen, at the address 1001 E. Broadway, Hawthorne, Calif.

3. That the dates, and the names and addresses of the persons to whom the Petitioner has issued financial statements, (including those to mercantile and trade agencies) upon his business and property within the two years immediately preceding the filing of the original Petition herein, are as follows:

Date:	Name of Concern:	Nature of Business:	Address:
Monthly	Bank of America National Trust & Savings Association	Banking	660 S. Spring St. Los Angeles, Calif.

4. That the last inventory of the Petitioner's property was taken on the 8th day of December, 1946 by (or under the supervision of) G. R. Case, address 1201 E. Lexington St., Pomona, Calif., and the said inventory was taken at the lower of cost or market; and the amount of said inventory was \$669,864.08.

That the next prior inventory to the last inventory taken of Petitioner's property was taken on the 31st day of July, 1946, by (or under the supervision of) G. R. Case, address 1201 E. Lexington St., Pomona, Calif., and the said inventory was taken at the lower of cost or market; and the amount of said inventory was \$306,680.83.

That the records of the two last inventories above referred to are in the possession of G. R. Case, address 1201 E. Lexington St., Pomona, Calif. Note: An inventory is being taken as of 7-31-47.



5. That the dates, sources, particulars and amounts of income received by the Petitioner during each of the two years immediately preceding the filing of the original Petition herein, other than from the operation of Petitioner's business, are as follows: None

6. That the last filing of a U.S. Federal Income Tax Return by the Petitioner was for the year 1946 and was filed by the Petitioner at the office of U.S. Collector of Internal Revenue at Los Angeles.

That the last filing of a State Income Tax Return by the Petitioner was for the year 1946 and was filed by the Petitioner at the office of Franchise Tax Commissioner of the State of California at Los Angeles.

7. That within the two years immediately preceding the filing of the original Petition herein, the Petitioner maintained bank accounts, alone or together with any other person, and in Petitioner's own name or any other name, as follows:

Name and Address of Bank:	Account in Name of:	Names of Persons authorized to make withdrawals:
Bank of America National Trust & Savings Association 660 S. Spring St., Los Angeles	Salsbury Motors, Inc.	*Foster Salsbury
Bank of America National Trust & Savings Association Pomona		*G. R. Case George Gore R. J. Pagen C. N. Monson
First National Bank, Pomona		
* Not "authorized on First National Bank of Pomona		

That within the two years immediately preceding the filing of the original Petition herein, the Petitioner maintained safe deposit boxes or other depositories for Petitioner's securities, cash, or other valuables, as follows:  
None

8. That the only property or properties held in trust by Petitioner for any other person are as follows:  
None

9. That within the six years immediately preceding the filing of the original Petition herein, proceedings under the Bankruptcy Act have been brought by or against the Petitioner as follows:

None

That at the time of the filing of the original Petition herein, certain property of the Petitioner was in the hands of a receiver or trustee, as follows:

None

That within the two years immediately preceding the filing of the original Petition herein, the Petitioner made assignments of Petitioner's property for the benefit of creditors or general settlement with Petitioner's creditors, as follows:

None

10. That during the year immediately preceding the filing of the original Petition herein, the Petitioner made repayments of loans, as follows:

(Note: Give the name and address of the lender, the amount of the loan and when received, the amount and date when repaid, and, if the lender is a relative, the relationship. If the Bankrupt or Debtor is a partnership, state whether the lender is or was a partner or a relative of a partner, and if so, the relationship.)

Name & Address of Lender Bank of America National Trust & Savings Assn. 660 S. Spring St. Los Angeles, Calif.	Amount of Loan \$100,000.00	Date Received 1-46	Paid Amount \$100,000	Date 2-46
	\$150,000.00	1-47	\$150,000	3-47
			\$100,000	4-47
			\$ 4,500	2-47
			\$ 4,500	5-47
			\$ 4,500	8-47



11. During the year immediately preceding the filing of the original Petition herein, the Petitioner transferred or disposed of, other than in the ordinary course of business, the following assets or properties:

None

12. That during the year immediately preceding the filing of the original Petition herein, the Petitioner assigned accounts receivable as follows:

None

13. That during the year immediately preceding the filing of the original Petition herein, the Petitioner suffered losses from fire, theft or gambling as follows:

None

(If the Bankrupt or Debtor is a partnership or corporation the following additional questions should be answered.)

14. That during the year immediately preceding the filing of the original Petition herein, personal withdrawals, including loans, have been made by each member of the partnership, or by each officer, director or managing executive of the corporation, as follows:

None

15. (If the Bankrupt or Debtor is a Partnership) The names and addresses of the members of the partnership, comprising the Petitioner, are as follows:

None

(If the Bankrupt or Debtor is a Corporation) The names, titles or offices held, and addresses of the officers, directors and managing executive and of each stockholder holding twenty-five (25%) percent of the issued and outstanding stock of the corporation petitioner, are as follows:

Name:	Office Held or Percent of Stock Held :	Address :
Richard W. Millar	Chairman of the Board	e/o Northrop Aircraft, Inc. Hawthorne, Calif.
E. F. Salsbury	Vice-President-Director	e/o Salsbury Motors, Inc. Pomona, Calif.
G. R. Case	General Manager & Treasurer-Director	e/o Salsbury Motors, Inc. Pomona, Calif.
George Gore	Assistant Secretary	e/o Northrop Aircraft, Inc. Hawthorne, Calif.
La Motte T. Cohu	Director	5700 Avion Drive Los Angeles 45, Calif.
John K. Northrop	Director	e/o Northrop Aircraft, Inc. Hawthorne, Calif.
C. N. Monson	Director	e/o Northrop Aircraft, Inc. Hawthorne, Calif.

Salsbury Motors, Inc.  
Bankrupt or Debtor

By: E. F. Salsbury, V.P.

Oath to Statement of Affairs

State of California,  
County of Los Angeles—ss.

I, E. F. Salsbury, the person who subscribed to the foregoing statement of affairs, do hereby make solemn oath that the answers therein contained are true and complete to the best of my knowledge, information, and belief.

By /s/ E. F. SALSBURY,  
For Salsbury Motors, Inc.

Subscribed and sworn to before me this 20th day of August, 1947.

[Seal] /s/ RUBY E. SLOANAKER,  
Notary Public in and for the County of Los Angeles, State of California. [14]

## SUMMARY OF DEBTS AND ASSETS

(From the Statements of the Debtor  
in Schedules A and B)

June 30, 1947

## Schedule A 1—a

Wages .....\$ 38,842.05

## Schedule A 1—b (1)

Taxes due United States..... 39,254.92

## Schedule A 1—b (2)

Taxes due States..... 11,221.52

## Schedule A 1—b (3)

Taxes due counties, districts and  
municipalities ..... 21,178.99

## Schedule A 1—c (1)

Debts due any person, including  
the United States, having prior-  
ity by laws of the United States none

## Schedule A 1—c (2)

Rent having priority..... 2,150.00

## Schedule A 2

Secured claims..... 766,307.78

## Schedule A 3

Unsecured claims..... 1,845,925.74

## Schedule A 4

Notes and bills which ought to be  
paid by other parties thereto... none

## Schedule A 5

Accommodation paper..... none

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Schedule A, total....\$2,724,881.00

Schedule B 1	
Real estate, buildings and ground improvements .....	\$ 307,272.31
Schedule B 2—a	
Cash on hand.....	13,919.72
Schedule B 2—b	
Negotiable and non-negotiable in- struments and securities.....	35,837.00
Schedule B 2—c	
Stocks in trade.....	916,527.38
Schedule B 2—d	
Household goods.....	none
Schedule B 2—e	
Books, prints and pictures.....	none
Schedule B 2—f	
Horses, cows and other animals...	none
Schedule B 2—g	
Automobiles and other vehicles...	3,889.32
Schedule B 2—h	
Farming stock and implements...	none
Schedule B 2—i	
Shipping and shares in vessels....	none
Schedule B 2—j	
Machinery, fixtures and tools.....	492,123.54
Schedule B 2—k	
Patents, copyrights, and trade- marks, license rights.....	12,499.01
Schedule B 2—l	
Other deferred charges.....	7,277.49
Schedule B 3—a	
Debts due on open accounts net of reserve \$4,459.34.....	306,342.89

## Schedule B 3—b

Policies of insurance and prepaid taxes of \$10.69.....	4,430.51
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## Schedule B 3—c

Unliquidated claims, royalties paid in advance.....	15,350.30
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## Schedule B 3—d

Deposits of money in banks and elsewhere .....	47,487.70
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## Schedule B 4

Property in reversion, remainder, expectancy or trust.....	none
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## Schedule B 5

Property claimed as exempt.....	none
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## Schedule B 6

Books, deeds and papers.....	none
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Schedule B, total....\$2,162,957.17

/s/ E. F. SALSBUURY, V.P.,  
For Salsbury Motors, Inc.,  
Petitioner.

[Endorsed]: Filed Aug. 20, 1947. U. S. D. C.

[Title of District Court and Cause.]

APPROVAL OF DEBTOR'S PETITION AND  
ORDER OF REFERENCE UNDER SEC-  
TION 322 OF THE BANKRUPTCY ACT

At Los Angeles, in said District, on August 20, 1947, before the said Court the petition of Salsbury Motors, Inc., a corporation, that he desires to obtain relief under Section 322 of the Bankruptcy Act, and within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to Hugh L. Dickson, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Salsbury Motors, Inc., a corporation, shall attend before said referee on August 27, 1947, and at such times as said referee shall designate, at his office in Los Angeles, California, and shall submit to such orders as may be made by said referee or by this Court relating to said matter.

Witness, the Honorable Leon R. Yankwich, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on August 20, 1947.

EDMUND L. SMITH,  
Clerk.

[Seal] By /s/ F. BETZ,  
Deputy Clerk.

[Endorsed]: Filed Aug. 20, 1947. U. S. D. C.

[Title of District Court and Cause.]

### REFEREE'S CERTIFICATE ON REVIEW

To the Honorable the Judges of the United States  
District Court in and for the Southern District  
of California, Central Division:

I, Hugh L. Dickson, Referee in Bankruptcy, to  
whom the above-entitled proceedings were referred,  
do hereby certify:

1. The Petition of Salsbury Motors, Inc. under  
Chapter XI of the Bankruptcy Act was duly filed  
on August 20, 1947, and thereafter George T. Gog-  
gin was duly appointed and qualified as Receiver  
in said proceedings.

2. On December 8, 1947, Bank of America filed  
its proof of partially secured debt in this proceed-  
ing.

3. On February 19, 1948, Northrop Aircraft,  
Inc., filed its proof of claim in this proceeding.

4. On or about May 13, 1948, Receiver George  
T. Goggin filed objections to the claim of Northrop  
Aircraft, Inc., in this proceeding.

5. On July 16, 1948, Bank of America filed a  
motion for leave to file petition for intervention and  
answer to objections [36] of Receiver to claim of  
Northrop Aircraft, Inc.

6. On July 26, 1948, Receiver George T. Goggin  
filed an answer to the motion described in Para-  
graph 5 above.



7. On August 5, 1948, your Referee signed an order granting leave to Bank of America to intervene and answer Receiver's objections to the claim of Northrop Aircraft, Inc., and pursuant to said order, said petition to intervene and answer were filed.

8. On July 30, 1948, your Referee signed an order confirming Debtor's Second Amended Plan of Arrangement.

9. On June 30, 1948, George T. Goggin, Receiver, filed in this proceeding a "Petition of Receiver for Order Subordinating Claims of Bank of America."

10. On January 20, 1949, George T. Goggin, Receiver, filed in this proceeding a document entitled, "Supplement to Petition of Receiver for Order Subordinating Claims of Bank of America."

11. Orders to show cause were duly issued against Bank of America National Trust and Savings Association on the basis of the petitions described in Paragraphs 9 and 10 above, which orders came on for hearing before your Referee on March 2, 1949.

12. At the hearing on March 2, 1949, Respondent Bank of America National Trust and Savings Association filed a document entitled, "Response to Order to Show Cause Re Petition of Receiver for Order Subordinating Claims of Bank of America National Trust and Savings Association."

13. Your Referee on March 2, 1949, heard arguments and statements of counsel and indicated orally from the bench his opinion that the Court had no jurisdiction to determine the controversy and that the objections set forth in the response of Bank of America National Trust and Savings Association described in [37] Paragraph 12 above should be sustained. Your Referee directed counsel for the Respondent Bank to prepare an appropriate order.

14. On March 4, 1949, George T. Goggin served and filed a document designated, "Notice of Motion by George T. Goggin, as Receiver, to Reconsider Ruling on Motion of Bank of America Objecting to the Jurisdiction of the Bankruptcy Court Re: Subordination Hearing" and Points and Authorities in support of said motion.

15. The motion of George T. Goggin, Receiver, for reconsideration described in Paragraph 14 above duly came on for hearing on March 18, 1949, and your Referee heard arguments and statements of counsel and indicated orally from the bench that his previous ruling would stand.

16. On March 18, 1949, Respondent Bank of America submitted a form of order designated, "Order on Petition of Receiver for Order Subordinating Claims of Bank of America and on Supplemental Petition Thereto."

17. On March 19, 1949, at 9:00 a.m. George T. Goggin, Receiver, filed his formal "Objections of

Receiver to Proposed 'Order on Petition of Receiver for Order Subordinating Claims of Bank of America and on Supplement to Petition Thereto'."

18. Thereafter, on March 19, 1949, your Referee having read and considered the objections of Receiver described in Paragraph 17 above and being fully advised thereof, signed an "Order on Petition of Receiver for Order Subordinating Claims of Bank of America and on Supplemental Petition Thereto."

19. Attached to the objections of Receiver described in Paragraph 17 above as an exhibit thereto was a document designated, "Amended Petition of Receiver for an Order Subordinating Claims of Bank of America."

20. On April 6, 1949, on motion of George T. Goggin, Receiver, a hearing was had on the matters of the objections of [38] the Receiver described in Paragraph 17 above, and your Referee after hearing arguments of counsel determined that said objections be overruled.

21. On March 24, 1949, upon motion of George T. Goggin, Receiver, by his counsel, your Referee signed an "Order Extending Time Within Which to Petition for Review of 'Order on Petition of Receiver for Order Subordinating Claims of Bank of America and on Supplemental Petition Thereto'," extending the time to file said petition for review to April 14, 1949.

22. On April 7, 1949, upon motion of George T. Goggin, Receiver, your Referee further extended

the time within which to petition for review to April 24, 1949.

23. On April 20, 1949, George T. Goggin as Receiver and within the time allowed by your Referee filed a petition to review the said order described in Paragraph 19 above.

24. At the hearing on March 2, 1949, counsel for Receiver produced and discussed a document which he stated to be an amended petition, but said document was not served or filed at that time, nor was any notice of motion for leave to file any amended petition ever filed or served and no order was made thereon.

25. At the hearing on March 18, 1949, counsel for Receiver orally asked leave to file a document referred to as an amended petition, but said document was not served or filed at that time nor was any notice of motion for leave to file any amended petition ever filed or served, and no order was made thereon.

26. At the hearing on April 6, 1949, counsel for Receiver filed an amended petition after your Referee announced his ruling that the original order of March 19, 1949, would stand. No order was made with respect to said amended petition.

27. On November 23, 1948, your Referee signed an order [39] approving an Agreement of Indemnity by which Northrop Aircraft, Inc., agreed to indemnify the Receiver herein against certain specified liabilities.

28. On December 23, 1948, there was filed in this proceeding a release and satisfaction of the Agreement of Indemnity described in Paragraph 27 above.

29. The questions presented by the petition for review are:

a. Whether this Court under the provisions of the applicable statutes and of the order confirming the plan of arrangement has jurisdiction to determine controversies between creditors.

b. Whether the Receiver has any right, power or authority to seek to subordinate one creditor to another under the circumstances of this case.

c. Whether the petition to subordinate claim of Bank of America and supplement thereto state facts sufficient to justify the granting of the relief prayed for.

30. Your Referee is transmitting with his certificate on Review the following:

(1) Proof of claim of the Bank of America, dated September 8, 1947, and denominated as follows: "In Proceedings under Chapter XI, Section 322 of the Bankruptcy Act, Proof of Partially Secured Debt." By Reference—On Review.

(2) Notice of Motion of Bank of America to file petition for intervention and answer to objections by Receiver to claim of Northrop Aircraft, Inc., dated July 16, 1948.

(3) Answer of Bank of America to the aforesaid objections to the claims of Northrop Aircraft, Inc., filed pursuant to the order of August 5, 1948,

granting the motion of Bank of America National Trust and Savings Association for leave to file the petition for intervention and answer to objections by Receiver [40] to claims of Northrop Aircraft, Inc.

(4) The Debtor's Second Amended Plan of Arrangement under Chapter XI of the Bankruptcy Act.

(5) Order of the Referee in Bankruptcy dated July 30, 1948, confirming the Debtor's Second Amended Plan.

(6) Form of consent to said Second Amended Plan, as contained in the consent of Fairbanks-Morse & Co.

(7) The petition of George T. Goggin as Receiver dated July 30, 1948, for order subordinating the claims of Bank of America.

(8) Supplement to petition of George T. Goggin as Receiver for order subordinating claims of Bank of America, dated January 20, 1949.

(9) Order to show cause issued by the Referee re Bank of America dated July 30, 1948.

(10) Agreement of Indemnity of Northrop Aircraft, Inc., and order of court approving the same, dated November 19, 1948. (Signed November 23, 1948.)

(11) Document entitled, "Release and Satisfaction of Indemnity Agreement" dated December 23, 1948.

(12) Document filed by Bank of America dated March 2, 1949, designated, "Response to Order to Show Cause Re Petition of Receiver for Order



Subordinating Claims of Bank of America National Trust and Savings Association.”

(13) Reporter’s transcript of hearing on objections to claim of Bank of America, said hearing being held on March 2, 1949.

(14) Notice of Motion by George T. Goggin, as Receiver, dated March 4, 1949, to reconsider ruling on motion of Bank of America, objecting to the jurisdiction of the Bankruptcy Court re subordination hearing. [41]

(15) Points and Authorities dated March 7, 1949, in support of motion of George T. Goggin as Receiver to reconsider ruling of Referee on the jurisdiction point involving the subordination of Bank of America.

(16) Order of the Referee in Bankruptcy dated March 19, 1949, on petition of Receiver for order subordinating claims of Bank of America and on supplemental petitions thereto.

(17) Court reporter’s transcript of hearing on the motion of Receiver to reconsider ruling on motion of Bank of America, objecting to the jurisdiction of the Bankruptcy Court, re subordination hearing, said hearing being held on March 18, 1949.

(18) Objections of Receiver to proposed “Order on Petition of Receiver for Order Subordinating Claims of Bank of America, and on Supplement to Petition Thereto.”

(19) Court reporter’s transcript of hearing of April 6, 1949, overruling the objections of the Receiver to the proposed order on the Bank of Amer-

ica ruling and the refusal of the Referee to consider the amended petition.

(20) Original verified document dated March 18, 1949, entitled, "Amended Petition of Receiver for an Order Subordinating Claims of Bank of America." (Filed April 6, 1949.)

(21) Order of March 24, 1949, extending time within which to petition for review to the 14th day of April, 1949.

(22) Order of the Referee in Bankruptcy dated April 7, 1949, extending the time within which to petition for review.

(23) Petition for Review dated April 18, 1949.

(24) Proof of Claim filed by Northrop Aircraft, Inc., filed February 19, 1948.

(25) Objections of Receiver to Claim of Northrop dated May 12, 1948. [42]

(26) Answer of Receiver to motion of Bank for leave to file petition for intervention and answer to objections of Receiver to claim of Northrop Aircraft, Inc., dated July 26, 1948.

(27) Order of August 5, 1948, granting leave to Bank of America to intervene.

Dated this 16th day of May, 1949.

HUGH L. DICKSON,  
Referee.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 24, 1949, U.S.D.C.

Filed May 14, 1948. [43]

HUGH L. DICKSON,  
Referee.



[Title of District Court and Cause.]

## DEBTOR'S PROPOSED SECOND AMENDED PLAN OF ARRANGEMENT

Salsbury Motors, Inc., proposed the following as its second amended plan of arrangement:

### Article I

That creditors of petitioner be divided into classes and that the proposed classes be as follows:

Class A: Expenses of administration incurred since the filing of the original plan of arrangement, and such expenses as may be incurred in carrying out the second amended plan of arrangement, excluding any allowance to the attorney for the debtor, but including an allowance to the attorneys for the receiver, a reasonable fee to be allowed to the creditors' committee, fee to be allowed to George T. Goggin, as receiver and as disbursing agent under the second amended plan of arrangement, which disbursing agent's fee shall be the same as that paid to a trustee in bankruptcy, and a reasonable fee to the attorneys for George T. Goggin for services rendered to him as receiver or disbursing agent, after the order of confirmation, all as may be allowed by the above-entitled court. [88]

Class B: That there next be paid the claims in full of all creditors entitled to priority provided in the Acts of Congress relating to bankruptcy, as amended.

Class C: That there next be paid to all creditors holding securities, liens or claims against the assets

of debtor, being returned to the debtor, such amounts as the court may adjudge to be due said secured creditors.

Class D: That there shall next be paid to all other creditors of the above-named debtor, a pro rata dividend in the same manner and with like effect as if an order of adjudication were entered herein, and the trustee in bankruptcy was paying a partial or final dividend, said payments to be made at such time and in such amounts as the court may from time to time, upon the petition of any party in interest, order, and the court to reserve jurisdiction to determine the amount and validity of all claims and the classification of said claims and all objections that may be made in respect thereto with like effect and power as if the above-named debtor had been adjudicated a bankrupt, and George T. Goggin was the acting trustee in bankruptcy. That said George T. Goggin, as receiver and disbursing agent, shall have the right to object to any and all claims with like effect as if he were acting in the capacity of trustee in bankruptcy.

## Article II

That there be transferred and returned to the debtor, all of the real property and personal property referred to and sought to be sold to the Brown-Bevis Company under an order confirming sale to them on February 16, 1948, free and clear of all liens, claims and rights of all secured or unsecured persons, and free and clear of all claims of dis-

chargeable and non-dischargeable debts except the lien in favor of a bank or lending institution in the amount of Five Hundred Fifty Thousand Dollars (\$550,000.00) hereinafter provided to be given as part of the execution of this second amended plan of arrangement, the court to enter an injunctive [89] order in the order approving the second amended plan of arrangement, protecting the debtor and the assets so returned to the debtor from suits, claims and liens in respect to said assets, and substituting in lieu thereof, for the parties asserting such claims, the right to file a claim with the above-entitled court and to be paid from the assets in the hands of George T. Goggin as receiver and disbursing agent, such amounts as the court may adjudge and determine.

### Article III

That the debtor pay within five (5) days after the order confirming this second amended plan of arrangement has become final, any unpaid portion of the sum of Five Hundred Thousand Dollars (\$500,000.00) to George T. Goggin, as receiver or disbursing agent, in consideration of the approval of the second amended plan of arrangement and the delivery of the assets to the debtor free and clear of the claims of all persons.

### Article IV

That there remain vested in George T. Goggin as receiver and disbursing agent, all causes of action, exclusive of the matters settled and compro-

mised as set forth in Article V herein, that could or would vest in George T. Goggin as trustee in bankruptcy in the event an order of adjudication were entered in the above-entitled proceeding, with full right and power to prosecute any and all causes of action, objections to claims, with full right to assert all offsets, counterclaims and affirmative claims, and any and all other rights that are now vested in him as receiver herein, or that would vest in him as a trustee in bankruptcy in the event of the entry of an order adjudging the above-named debtor to be bankrupt under the Acts of Congress relating to bankruptcy, and the appointment of George T. Goggin as trustee in bankruptcy. There shall remain vested in the creditors, such rights of actions and claims as they may have at this time against parties other than the debtor, exclusive of the matters settled and compromised in Article V herein, without limiting any of [90] the foregoing provisions contained in this Article V, the order confirming the second amended plan of arrangement and the acceptance by creditors of the same, shall be without prejudice as to the rights of creditors, receiver, his successor in interest, or the bankrupt estate, in connection with any and all proceedings or claims existing or now pending or that may be instituted against any person or corporation, except the rights, claims and demands settled and compromised under Article V herein.

#### Article V

Northrop Aircraft, Inc., hereinafter called

“Northrop,” has on file its claim against the debtor for \$1,345,531.72, which claim recites that the indebtedness of the debtor to Northrop as set forth therein has been subordinated to the indebtedness of said debtor to Bank of America National Trust & Savings Association by an agreement in writing between said bank and Northrop. The receiver herein has filed objections to the allowance of said claim and has asked for an order determining said claim should be subordinated to the claims of other creditors on file herein, and that Northrop is liable for all of the debts and obligations of the debtor. Northrop is willing to pay to George T. Goggin, as receiver, the consideration hereinafter described in full satisfaction of all claims and demands that any creditor may have against Northrop by reason of any and all liability incurred by the debtor. Bank of America National Trust & Savings Association, by reason of said subordination agreement executed by Northrop, asserts the right to receive dividends upon said claim of Northrop *pari passu* with other general claims against the debtor, until it has received satisfaction of the total amount of its present claim of \$198,818.44 (representing the unpaid balance remaining after allowance of the banker’s lien and setoff pursuant to order of Referee Dickson dated March 22, 1948), which position is resisted by the receiver and creditors, and a controversy exists in regard thereto. The receiver and creditors desire that dividends be [91] paid to creditors forthwith, without the Northrop claim participating therein, and without the receiver with-



holding funds in respect to said claim of Northrop against the debtor pending final determination of the above controversy in respect to dividends on said claim of Northrop against the debtor.

That therefore as part of this second amended plan of arrangement, and to be included in the order approving the same, the following settlement, releases and consideration to be paid will be effected:

1. George T. Goggin, as receiver, acting for and on behalf of all creditors herein and on behalf of the above estate, execute a release and compromise agreement releasing the debtor corporation and Northrop Aircraft, Inc., of all claims, demands of every character and nature, arising out of transactions between the creditors and the debtor herein.

2. In consideration of said release and in consideration of the creditors consenting to the second amended plan of arrangement, and in consideration of the court approving the same, Northrop Aircraft, Inc., will:

- (a) Forthwith pay to George T. Goggin, as receiver, and as the representative of creditors, the sum of Seventy-five Thousand Dollars (\$75,000.00) to be disbursed and paid to creditors as may be ordered paid by the court and as herein provided. Without affecting the generality of the release stated herein, it is agreed that the legal basis for the payment thereof is the settlement of the controversy of the "alter ego" contentions of the receiver.

- (b) Agree to the entry of an order subordi-

nating all of its right, title and interest in and to its said claim against the debtor to the claims of all other creditors herein; [92]

(c) In order to consummate the payment to creditors pending a determination of the above-mentioned controversy between George T. Goggin, as receiver herein, and the Bank of America National Trust & Savings Association, Northrop agrees to execute an indemnity agreement or surety bond, or to make a cash deposit, as it may elect, in such form and amounts as may be hereinafter approved by the above-entitled court after notice to the Bank of America, said indemnity agreement surety bond or deposit to indemnify George T. Goggin as receiver herein, and to be in the approximate sum of \$90,000,00, which is the amount estimated as the maximum amount payable as a dividend to the Bank of America upon Northrop's claim in the event that the Bank of America is adjudged by final order of the court to be correct in its contentions as above set forth. The indemnity liability of Northrop shall not be increased by reason of any increase in the claim of the Bank of America as above set forth, or by reason of any subordination of such claim of the Bank of America, in whole or in part, to the claims of other general creditors with respect to the funds in the hands of George T. Goggin, as receiver, or any part thereof, or as a result of any other obligation, controversy or settlement between said George T. Goggin and said Bank of America, which affect the status or the amount of said claim.



(d) Northrop will deposit, or include in said indemnity agreement, an amount equal to a sum required to be paid into the Referee's Salary Fund in the event a dividend is required to be paid on the Northrop claim.

(e) Northrop will deposit or include in said indemnity agreement, a provision agreeing to reimburse this estate or George T. Goggin, as receiver, for the actual cost [93] incurred and for his attorney's fees incurred in the prosecution or defense of the litigation with the Bank of America National Trust & Savings Association, involving the Northrop claim and the right to receive dividends thereon, said sums to be hereinafter fixed by the above-entitled court after a final order.

## Article VI

The court to retain jurisdiction to carry out the plan of arrangement and to pass upon all controversies with creditors and third parties, with like effect as if an order of adjudication were entered herein and George T. Goggin was appointed trustee in bankruptcy.

## Article VII

In the event any claims are in controversy, that the court reserve jurisdiction to direct George T. Goggin as receiver and disbursing agent, to hold and retain sufficient sums as the court may direct and order, to cover prospective dividends in respect to said disputed claims, and that pending a final deter-

mination of said controversy, dividends be paid to other creditors whose claims are not in dispute, in such amounts and at such times as the court may hereinafter order.

### Article VIII

That in order to enable your petitioner to carry out this second amended plan of arrangement, it is necessary that your petitioner borrow from a bank or lending institution, the sum of Five Hundred Fifty Thousand Dollars (\$550,000.00) and to secure said loan by the giving of a trust deed and chattel mortgage creating a first lien against all of the assets being returned to the debtor under this second amended plan of arrangement. That the president and secretary of the debtor be authorized to execute a note, secured by a deed of trust and a [94] chattel mortgage and such other papers, documents and commitments as may be required by the bank or lending institution making the loan, in order to consummate said transaction, this court reserving the right, by separate order, if requested so to do, to approve the form of documents to be hereinafter executed in connection with the procuring of said loan.

### Article IX

That the debtor corporation and George T. Goggin as receiver and disbursing agent, be authorized to enter into an escrow with the Title Insurance & Trust Company, as escrow holder, to consummate

the delivery of the documents required and the payment of the consideration of Five Hundred Thousand Dollars (\$500,000.00) to be paid for the benefit of the creditors of this estate, the escrow fee and title expenses to be borne by the debtor herein, said sums to be in addition to the Five Hundred Thousand Dollars (\$500,000.00) being paid to George T. Goggin, as receiver.

### Article X

That as part of the order confirming this second amended plan of arrangement, the above-entitled court, on receiving the written consent and other documents that may be required of the Brown-Bevis Company, enter as part of its order herein, an order disaffirming the sale heretofore made to the Brown-Bevis Company.

### Article XI

Wherein George T. Goggin is mentioned as receiver or disbursing agent, in the event of his death, resignation or incapacity, all rights in him shall vest in his successor in interest appointed by the Referee in Bankruptcy in the matter of Salsbury Motors, Inc.

### Article XII

The debtor shall be vested with all parts heretofore reserved from the order confirming sale for the repair or replacement of scooters required under a warranty issued in connection with their [95] sale, upon the debtor assuming, in writing, and

agreeing to protect, George T. Goggin as receiver, and the above-entitled estate, in respect to any warranties issued by George T. Goggin in connection with said scooters.

### Article XIII

That in addition to the Five Hundred Thousand Dollars (\$500,000.00) the debtor agrees to pay through said escrow, expenses incurred by this court in the giving of notice to creditors and conducting of hearings in respect to the second amended plan of arrangement, and the amended plan of arrangement heretofore filed, and for services of creditors' committee and the attorneys for the receiver, as may be fixed and allowed by the court, not exceeding the sum of Fifteen Hundred Dollars (\$1500.00).

This second amended plan of arrangement is submitted by Salsbury Motors, Inc., a California corporation, by its officers, acting under and pursuant to a resolution of its board of directors and the consent of two-thirds of its stockholders.

Dated this 7th day of July, 1948.

SALSBURY MOTORS, INC.,  
By /s/ CHAS. M. WEINBERG,  
President,

By /s/ MILTON SCHWARTZ,  
Secretary.

Filed July 8, 1948.

HUGH L. DICKSON,  
Referee. [96]

[Title of District Court and Cause.]

ORDER CONFIRMING DEBTOR'S SECOND  
AMENDED PLAN OF ARRANGEMENT  
UNDER CHAPTER XI OF BANKRUPTCY  
ACT.

The above-named debtor, having filed its Second Amended Plan of Arrangement pursuant to permission of this Court, and notice having been given as provided by law to all creditors and other parties in interest, of a hearing to be had on July 28, 1948, at the hour of 10:00 o'clock a.m. before the undersigned Referee in Bankruptcy, and the matter having come on regularly for hearing upon said date, and the debtor having appeared by its counsel, Francis B. Cobb, and the receiver and creditors' committee having appeared in person and by their attorney, Martin Gendel, and the Bank of America National Trust and Savings Association having appeared by its attorney, Hugo A. Steinmeyer, and the Court having heard and considered the matter and the objections by the Bank of America and directed preparation of a final order approving the same, and there being no other objections by any other party or person other than said Bank of America, and the debtor having filed its application for confirmation as provided by Section 362 of the Bankruptcy Act as Amended, and having filed with the Court the consent of creditors who have filed claims, and it appearing from said consents that said Second Amended Plan of Arrange-

ment [97] has been accepted by creditors having provable claims herein in excess of a majority in number and amount of such creditors' claims, and it appearing that said arrangement has been duly accepted in accordance with the provisions of Chapter XI of the Bankruptcy Act as Amended, and that the deposits required by law have been made and provided and that said arrangement is for the best interest of the creditors of said debtor, and that said arrangement is fair and equitable and feasible and that said debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt, that the proposal of said Second Amended Plan of Arrangement and its acceptance are in good faith and have not been made or procured by any means, promises or acts forbidden by law;

It is Hereby Ordered, Adjudged and Decreed that said Arrangement, a copy of which is annexed hereto and marked Exhibit "A," be and it hereby is confirmed, except that no provision of said arrangement nor of this order confirming the same, shall have the effect of releasing Northrop Aircraft, Inc., from claims other than claims against it which George T. Goggin, as receiver or as trustee in bankruptcy of the debtor corporation, or the creditors of the debtor corporation or any of them may have against Northrop to the effect that Northrop is liable or responsible for any of the obligations of the debtor, Salsbury Motors, Inc.



It Is Further Ordered that George T. Goggin, as receiver, be and hereby is authorized to execute a release and compromise agreement, releasing the debtor corporation and Northrop Aircraft, Inc., upon receipt of the consideration and as provided in the debtor's Second Amended Plan of Arrangement.

It is Further Ordered that a sale heretofore confirmed to Brown-Bevis Company, of certain assets of this corporation, be and the same is hereby disaffirmed, that said assets covered by said [98] Order Confirming Sale are hereby vested in and adjudged to be the property of the debtor corporation, free and clear of all liens, claims and rights of all creditors and persons, and free and clear of all claims of dischargeable and non-dischargeable debts except the lien in favor of the Bank of America National Trust and Savings Association to secure a note in the amount of \$550,000.00, which note shall be secured by a deed of trust and chattel mortgage in a form to be hereinafter approved by the above-entitled court, and that said last mentioned note and the lien securing the same are to provide the consideration being received by George T. Goggin, as receiver and disbursing agent, to carry out the terms and conditions of the debtor's Second Amended Plan of Arrangement.

It is Further Ordered that the debtor shall be vested with title to all parts heretofore reserved from the Order Confirming Sale for the repair or replacement of scooters as may be required under a warranty issued in connection with their sale;



the debtor is to protect George T. Goggin, as receiver, and the above-entitled estate, in respect to any warranty issued by George T. Goggin, as receiver, in connection with said scooters.

It Is Further Ordered that this court retains and reserves jurisdiction to determine the amount and validity of all claims of creditors, both secured and unsecured, and the classification of said claims, and all objections that have heretofore been made or that may be made in regard thereto, with a like effect and power as if the above-named debtor had been adjudged a bankrupt and George T. Goggin were the acting trustee in bankruptcy; and that George T. Goggin, as receiver and disbursing agent, shall have the right to object to any and all claims with like effect as if he were acting in the capacity of a trustee in bankruptcy.

It Is Further Ordered that this court will, by separate order, provide for allowances and payment of dividends and the approval of a Report and Account of George T. Goggin, as receiver. [99]

It Is Further Ordered that George T. Goggin, as receiver, pay to creditors holding secured liens or claims against the assets of the debtor, such liens and claims, in order that the assets ordered to be delivered to the debtor may be delivered to the debtor free and clear of such liens and claims, and there is substituted in lieu of said liens and claims of creditors, the sum of \$500,000.00, being received by George T. Goggin, as receiver, as part of the

debtor's Second Amended Plan of Arrangement, and that all persons and parties shall have the right to file a claim with the above-entitled court and be paid from the assets in the hands of said George T. Goggin, as receiver, such amounts as the court may adjudge and determine, and all secured and unsecured creditors and other parties are hereby enjoined from interfering with or asserting any claim to any of the assets being vested in the debtor corporation under the Second Amended Plan of Arrangement and this order confirming the same.

Dated this 30th day of July, 1948.

/s/ HUGH L. DICKSON,  
Referee in Bankruptcy.

Approved as to form:

/s/ HUGO A. STEINMEYER,  
Attorney for  
Bank of America.

O'MELVENY & MYERS,  
By /s/ MAYNARD J. TOLL,  
GRAHAM L. STERLING, JR.,  
Attorneys for  
Northrop Aircraft, Inc.

/s/ MARTIN GENDEL,  
Attorney for Receiver  
Creditors' Committee. [100]

EXHIBIT "A"

Proposed Second Amended Plan of Arrangement  
In Bankruptcy No. 45,207-B

In the District Court of the United States for the Southern District of California, Central Division.

In the matter of Salsbury Motors, Inc., Debtor.

Salsbury Motors, Inc., proposes the following as its second amended plan of arrangement:

Article I

That creditors of petitioner be divided into classes and that the proposed classes be as follows:

Class A: Expenses of administration incurred since the filing of the original plan of arrangement, and such expenses as may be incurred in carrying out the second amended plan of arrangement, excluding any allowance to the attorney for the debtor, but including an allowance to the attorneys for the receiver, a reasonable fee to be allowed to the creditors' committee, fee to be allowed to George T. Goggin, as receiver and as disbursing agent under the second amended plan of arrangement, which disbursing agent's fee shall be the same as that paid to a trustee in bankruptcy, and a reasonable fee to the attorneys for George T. Goggin for services rendered to him as receiver or disbursing agent, after the order of confirmation, all as may be allowed by the above-entitled court.

Class B: That there next be paid the claims in

full of all creditors entitled to priority provided in the Acts of Congress relating to bankruptcy, as amended.

Class C: That there next be paid to all creditors holding securities, liens or claims against the assets of debtor, being returned to the debtor, such amounts as the court may adjudge to be due said secured creditors.

Class D: That there shall next be paid to all other creditors of the above-named debtor, a pro rata dividend in the same manner and with like effect as if an order of adjudication were entered herein, and the trustee in bankruptcy was paying a partial or final dividend, said payments to be made at such time and in such amounts as the court may from time to time upon the petition of any party in interest, order, and the court to reserve jurisdiction to determine the amount and validity of all claims and the classification of said claims and all objections that may be made in respect thereto with like effect and power as if the above-named debtor had been adjudicated a bankrupt, and George T. Goggin was the acting trustee in bankruptcy. That said George T. Goggin, as receiver and disbursing agent, shall have the right to object to any and all claims with like effect as if he were acting in the capacity of trustee in bankruptcy.

## Article II.

That there be transferred and returned to the debtor, all of the real property and personal prop-

erty referred to and sought to be sold to the Brown-Bevis Company under an order confirming sale to them on February 16, 1948, free and clear of all liens, claims and rights of all secured or unsecured persons, and free and clear of all claims of dischargeable and non-dischargeable debts except the lien in favor of a bank or lending institution in the amount of Five Hundred Fifty Thousand Dollars (\$550,000.00) hereinafter provided to be given as part of the execution of this second amended plan of arrangement, the court to enter an injunctive order in the order approving the second amended plan of arrangement, protecting the debtor and the assets so returned to the debtor from suits, claims and liens in respect to said assets and substituting in lieu thereof, for the parties asserting such claims, the right to file a claim with the above-entitled court and to be paid from the assets in the hands of George T. Goggin as receiver and disbursing agent, such amounts as the court may adjudge and determine.

### Article III.

That the debtor pay within five (5) days after the order confirming this second amended plan of arrangement has become final, any unpaid portion of the sum of Five Hundred Thousand Dollars (\$500,000.00) to George T. Goggin, as receiver or disbursing agent, in consideration of the approval of the second amended plan of arrangement and the delivery of the assets to the debtor free and clear of the claims of all persons.

## Article IV.

That there remain vested in George T. Goggin as receiver and disbursing agent, all causes of action, exclusive of the matters settled and compromised as set forth in Article V herein, that could or would vest in George T. Goggin as trustee in bankruptcy in the event an order of adjudication were entered in the above-entitled proceeding, with full right and power to prosecute any and all causes of action, objections to claims, with full right to assert all offsets, counterclaims and affirmative claims, and any and all other rights that are now vested in him as receiver herein or that would vest in him as a trustee in bankruptcy in the event of the entry of an order adjudging the above-named debtor to be a bankrupt under the Acts of Congress relating to bankruptcy, and the appointment of George T. Goggin as trustee in bankruptcy. There shall remain vested in the creditors, such rights of actions and claims as they may have at this time against parties other than the debtor, exclusive of the matters settled and compromised in Article V herein, without limiting any of the foregoing provisions contained in this Article, the order confirming the second amended plan of arrangement and the acceptance by creditors of the same, shall be without prejudice as to the rights of creditors, receiver, his successor in interest, or the bankrupt estate, in connection with any and all proceedings or claims existing or now pending or that may be



instituted against any person or corporation, except the rights, claims and demands settled and compromised under Article V herein.

### Article V

Northrop Aircraft, Inc., hereinafter called "Northrop," has on file its claim against the debtor for \$1,345,531.72, which claim recites that the indebtedness of the debtor to Northrop as set forth therein has been subordinated to the indebtedness of said debtor to Bank of America National Trust & Savings Association by an agreement in writing between said bank and Northrop. The receiver herein has filed objections to the allowance of said claim and has asked for an order determining said claim should be subordinated to the claims of other creditors on file herein, and that Northrop is liable for all of the debts and obligations of the debtor. Northrop is willing to pay to George T. Goggin, as receiver, the consideration hereinafter described in full satisfaction of all claims and demands that any creditor may have against Northrop by reason of any and all liability incurred by the debtor. Bank of America National Trust & Savings Association, by reason of said subordination agreement executed by Northrop, asserts the right to receive dividends upon said claim of Northrop *pari passu* with other general claims against the debtor, until it has received satisfaction of the total amount of its present claim of \$198,818.44 (representing the unpaid balance remaining after allowance of the



banker's lien and setoff pursuant to order of Referee Dickson dated March 22, 1948), which position is resisted by the receiver and creditors, and a controversy exists in regard thereto. The receiver and creditors desire that dividends be paid to creditors forthwith, without the Northrop claim participating therein, and without the receiver withholding funds in respect to said claim of Northrop against the debtor pending final determination of the above controversy in respect to dividends on said claim of Northrop against the debtor.

That therefore as part of this second amended plan of arrangement, and to be included in the order approving the same, the following settlement, releases and consideration to be paid will be effected:

1. George T. Goggin, as receiver, acting for and on behalf of all creditors herein and on behalf of the above estate, execute a release and compromise agreement releasing the debtor corporation and Northrop Aircraft, Inc., of all claims, demands of every character and nature, arising out of transactions between the creditors and the debtor herein.

2. In consideration of said release and in consideration of the creditors consenting to the second amended plan of arrangement, and in consideration of the court approving the same, Northrop Aircraft, Inc., will:

- (a) Forthwith pay to George T. Goggin, as receiver, and as the representative of creditors, the

sum of Seventy-five Thousand Dollars (\$75,000.00) to be disbursed and paid to creditors as may be ordered paid by the court and as herein provided. Without affecting the generality of the release stated herein, it is agreed that the legal basis for the payment thereof is the settlement of the controversy of the "alter ego" contentions of the receiver.

(b) Agree to the entry of an order subordinating all of its right, title and interest in and to its said claim against the debtor to the claims of all other creditors herein;

(c) In order to consummate the payment to creditors pending a determination of the above-mentioned controversy between George T. Goggin, as receiver herein, and the Bank of America National Trust & Savings Association, Northrop agrees to execute an indemnity agreement or surety bond, or to make a cash deposit, as it may elect, in such form and amounts as may be hereinafter approved by the above-entitled court after notice to the Bank of America, said indemnity agreement surety bond or deposit to indemnify George T. Goggin as receiver herein, and to be in the approximate sum of \$90,000.00, which is the amount estimated as the maximum amount payable as a dividend to the Bank of America upon Northrop's claim in the event that the Bank of America is adjudged by final order of the court to be correct in its contentions as above set forth. The indemnity liability of Northrop shall not be increased by reason of any

increase in the claim of the Bank of America as above set forth, or by reason of any subordination of such claim of the Bank of America, in whole or in part, to the claims of other general creditors with respect to the funds in the hands of George T. Goggin, as receiver, or any part thereof, or as a result of any other litigation, controversy or settlement between said George T. Goggin and said Bank of America, which affect the status or the amount of said claim.

(d) Northrop will deposit, or include in said indemnity agreement, an amount equal to a sum required to be paid into the Referee's Salary Fund in the event a dividend is required to be paid on the Northrop claim.

(e) Northrop will deposit or include in said indemnity agreement, a provision agreeing to reimburse this estate or George T. Goggin, as receiver, for the actual cost incurred and for his attorney's fees incurred in the prosecution or defense of the litigation with the Bank of America National Trust & Savings Association, involving the Northrop claim and the right to receive dividends thereon, said sums to be hereinafter fixed by the above-entitled court after a final order.

## Article VI

The court to retain jurisdiction to carry out the plan of arrangement and to pass upon all controversies with creditors and third parties, with like effect as if an order of adjudication were entered

herein and George T. Goggin was appointed trustee in bankruptcy.

### Article VII

In the event any claims are in controversy, that the court reserve jurisdiction to direct George T. Goggin as receiver and disbursing agent, to hold and retain sufficient sums as the court may direct and order, to cover prospective dividends in respect to said disputed claims, and that pending a final determination of said controversy, dividends be paid to other creditors whose claims are not in dispute, in such amounts and at such times as the court may hereinafter order.

### Article VIII

That in order to enable your petitioner to carry out this second amended plan of arrangement, it is necessary that your petitioner borrow from a bank or lending institution, the sum of Five Hundred Fifty Thousand Dollars (\$550,000.00) and to secure said loan by the giving of a trust deed and chattel mortgage creating a first lien against all of the assets being returned to the debtor under this second amended plan of arrangement. That the president and secretary of the debtor be authorized to execute a note, secured by a deed of trust and a chattel mortgage and such other papers, documents and commitments as may be required by the bank or lending institution making the loan, in order to consummate said transaction, this court reserving

the right, by separate order, if requested so to do, to approve the form of documents to be hereinafter executed in connection with the procuring of said loan.

### Article IX

That the debtor corporation and George T. Goggin as receiver and disbursing agent, be authorized to enter into an escrow with the Title Insurance & Trust Company, as escrow holder, to consummate the delivery of the documents required and the payment of the consideration of Five Hundred Thousand Dollars (\$500,000.00) to be paid for the benefit of the creditors of this estate, the escrow fee and title expenses to be borne by the debtor herein, said sums to be in addition to the Five Hundred Thousand Dollars (\$500,000.00) being paid to George T. Goggin, as receiver.

### Article X

That as part of the order confirming this second amended plan of arrangement, the above-entitled court, on receiving the written consent and other documents that may be required of the Brown-Bevis Company, enter as part of its order herein, an order disaffirming the sale heretofore made to the Brown-Bevis Company.

### Article XI

Wherein George T. Goggin is mentioned as receiver or disbursing agent, in the event of his

death, resignation or incapacity, all rights in him shall vest in his successor in interest appointed by the Referee in Bankruptcy in the matter of Salsbury Motors, Inc.

### Article XII

The debtor shall be vested with all parts heretofore reserved from the order confirming sale for the repair or replacement of scooters required under a warranty issued in connection with their sale, upon the debtor assuming, in writing, and agreeing to protect, George T. Goggin as receiver, and the above-entitled estate, in respect to any warranties issued by George T. Goggin in connection with said scooters.

### Article XIII

That in addition to the Five Hundred Thousand Dollars (\$500,000.00) the debtor agrees to pay through said escrow, expenses incurred by this court in the giving of notice to creditors and conducting of hearings in respect to the second amended plan of arrangement, and the amended plan of arrangement heretofore filed, and for services of creditors' committee and the attorneys for the receiver, as may be fixed and allowed by the court, not exceeding the sum of Fifteen Hundred Dollars (\$1500.00).

This second amended plan of arrangement is submitted by Salsbury Motors, Inc., a California corporation, by its officers, acting under and pursuant



to a resolution of its board of directors and the consent of two-thirds of its stockholders.

Dated this 7th day of July, 1948.

SALSBURY MOTORS, INC.,

By /s/ CHAS. M. WEINGERG,  
President,

By /s/ MILTON SCHWARTZ,  
Secretary.

Filed June 20, 1948.

HUGH L. DICKSON,  
Referee. [101]

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[Title of District Court and Cause.]

### CONSENT BY CREDITOR TO SECOND AMENDED PLAN OF ARRANGEMENT

The undersigned, being a creditor of the above-named debtor, holding a claim in the amount of \$4393.06, acknowledges that the undersigned has received a copy of the debtor's second amended plan of arrangement and does hereby consent to said second amended plan of arrangement and the provisions and terms thereof, and agrees that the above-entitled court may enter an order confirming the same.

Upon the court approving the debtor's second amended plan of arrangement, and in consideration of the dividends to be forthwith received by the undersigned creditor as provided therein, the un-



dersigned hereby releases the debtor corporation and Northrop Aircraft, Inc., of all claims, demands and causes of action of every character and nature arising out of transaction between the undersigned and the debtor. [102]

This consent to the second amended plan of arrangement, except in respect to the release of the debtor and Northrop Aircraft, Inc., and the approval and confirmation by the court, shall not in any manner prejudice the rights, defenses or cause of action that the undersigned, as a creditor, would have, or that George T. Goggin, as receiver, now has, or that George T. Goggin, as trustee in bankruptcy, would have, or any creditor of Salsbury Motors, Inc., would have, in the event that Salsbury Motors, Inc., were adjudged a bankrupt and George T. Goggin were duly appointed trustee in bankruptcy, but that the rights of the undersigned and all parties shall be the same as if Salsbury Motors, Inc., were so adjudged a bankrupt and George T. Goggin were appointed trustee.

Dated: July 15, 1948.

DUCOMMUN METALS &  
SUPPLY CO.,

Creditor.

C. A. WARNACUTT,  
Credit Manager.

Filed July 29, 1948.

HUGH L. DICKSON,  
Referee.

[Title of District Court and Cause.]

PETITION OF RECEIVER FOR ORDER SUB-  
ORDINATING CLAIMS OF BANK OF  
AMERICA

To the Honorable Hugh L. Dickson, Referee in  
Bankruptcy:

Comes now your petitioner George T. Goggin, and  
respectfully represents as follows:

I.

That he is the duly appointed, qualified and  
acting Receiver in the within Chapter XI proceed-  
ings.

II.

That heretofore the Bank of America National  
Trust & Savings Association (hereinafter referred  
to as Bank of America) filed a claim in the within-  
bankruptcy proceedings for an amount in the sum  
of \$601,482.80, plus interest; that the amount now  
owing to Bank of America is the sum of \$198,-  
818.44; this sum represents the unpaid balance re-  
maining after allowance of the banker's lien and  
setoff pursuant to order of Referee Dickson dated  
March 22, 1948, which order is now on appeal by  
your petitioner. [104]

III.

Your petitioner is informed and believes, and  
therefore alleges that commencing in the early part  
of the year 1946, Bank of America received from  
Salsbury Motors Inc., the debtor herein, regular

monthly balance sheet statements and profit and loss statements, which profit and loss statements and balance sheets clearly reflected, in each month, that Salsbury Motors Inc., was not only losing money, but was actually insolvent as the word insolvent is defined by the Bankruptcy Act as amended. That the items now covered by the proof of claims filed in the within proceedings by Bank of America were then, at all times, due and owing, and after receipt of the first balance sheet and profit and loss statement evidencing in writing that Salsbury Motors Inc., was insolvent, the indebtedness reflected by the proof of claim of the Bank of America were in default; that in the face of such continuous default, Bank of America nevertheless did not enforce the terms of the written obligations evidencing the loans made by Bank of America to Salsbury Motors Inc., and permitted and allowed the said Salsbury Motors Inc., to continue to operate and to continue to incur new and additional liabilities, all as reflected by the provable claims of creditors now filed and allowed in the within bankruptcy proceedings.

#### IV.

That since Bank of America, knowingly and deliberately, permitted Salsbury Motors Inc., to operate while Bank of America was fully informed of the insolvency of said debtor, and because the conduct of Bank of America caused the continued extension of credit by the creditors' claims as hereabove described, it now appears, as a matter of law, that having withheld enforcement of the obligations

owing to it from the debtor herein, Bank of America is now estopped to contend that it is entitled to receive dividends upon whatever amount is ultimately allowed to it, as a provable [105] claim; that as a matter of law, the conduct of the Bank of America now estops said Bank from attempting to participate on a parity with the remaining unsecured trade creditors; that having lulled the afore-said creditors into a feeling of security, thereby inducing the continued extension of credit by said creditors, caused by the failure of the Bank to declare default in the largest single claim against Salsbury (with the exception of the subordinated Northrop Aircraft, Inc., claims), Bank of America, as a matter of equity, is not entitled to receive any dividend on its claims until all other provable creditors have been paid in full.

## V.

Without prejudice to the position of the Receiver as hereinabove alleged, but in order to present all of the facts and legal contentions now available to the Receiver with reference to the subject matter of subordination of the claims of the Bank of America, your petitioner further alleges as follows:

That as is reflected in Article V of the approved Second Amended Plan of Arrangement, your petitioner, as Receiver, filed objections to the claim of Northrop Aircraft, Inc. (hereinafter referred to as Northrop), and likewise sought affirmative relief against Northrop on the grounds that it was the "alter ego" of the debtor herein and was responsible for any deficiency in the total amount of the

claim after the dividends were paid to creditors; Northrop thereafter made an offer of compromise and settlement which was incorporated in the Second Amended Plan of Arrangement and has therein agreed to pay the sum of \$75,000.00 to your petitioner which payment is predicated upon the aforesaid "alter ego" contention of your petition; your petitioner believes, and therefore alleges, that the one creditor who had actual knowledge that it was apparently not the intention of Northrop to be responsible for the obligations of Salsbury, was and is Bank of America; the dealings between the Bank of America and Northrop with [106] reference to Salsbury Motors, Inc., loans were dealings reflected in writing and the Bank of America obtained from Northrop an agreement to subordinate the payment of any of its loans to the debtor herein until Bank of America was paid in full; but no express assumption or guarantee of liability was obtained by Bank of America from Northrop; therefore, since Bank of America knew that Northrop was not guaranteeing the payment of Salsbury claims it would be inequitable to allow Bank of America to participate in any dividend payable to creditors from the said \$75,000.00.

Wherefore, your petitioner prays that this Court make an order directing Bank of America to appear and show cause why: (1) any payment on the claim of Bank of America, against the within estate, as finally allowed, should not be subordinated to the payment of all other creditors; (2) if paragraph (1) is denied, why Bank of America should not

be subordinated with reference to the \$75,000.00 hereinabove described to the extent that it does not participate in any dividends from the said \$75,000.00 until all other creditors are paid in full.

Dated this 30th day of July, 1948.

/s/ GEORGE T. GOGGIN,  
Receiver.

Of Counsel,

/s/ MARTIN GENDEL. [107]

State of California,

County of Los Angeles—ss:

George T. Goggin being by me first duly sworn, deposes and says: that he is the Petitioner in the above-entitled action; that he has read the foregoing Petition of Receiver for Order Subordinating Claims of Bank of America and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

/s/ GEORGE T. GOGGIN.

Subscribed and sworn to before me this 30th day of July, 1948.

[Seal] /s/ ESTHER ANDERSON,  
Notary Public in and for said County and State of  
California.

Filed July 30, 1948.

HUGH L. DICKSON,  
Referee.



[Title of District Court and Cause.]

SUPPLEMENT TO PETITION OF RECEIVER  
FOR ORDER SUBORDINATING CLAIMS  
OF BANK OF AMERICA

To the Honorable Hugh L. Dickson, Referee in  
Bankruptcy:

Comes now your petitioner, George T. Goggin, and  
respectfully represents as follows:

VI.

That he is the duly appointed, qualified and acting  
Receiver in the within Chapter XI proceedings; that  
he heretofore filed with this Court by document  
dated the 30th day of July, 1948, a "Petition of  
Receiver for Order Subordinating Claims of Bank  
of America"; that in clarification of the scope of  
the basis for the Petition to Subordinate the claims  
of Bank of America, your petitioner supplements  
the said original petition by the addition thereto of  
the following allegations:

VII.

That the Bank of America, for the period between  
January 1, 1947, and August 20, 1947, knew the  
following facts: That Salsbury Motors, Inc., was at  
all times insolvent; that Salsbury Motors, Inc., was  
unable to meet and pay its current obligations in  
substantial amounts owing to Bank of America; that  
Salsbury Motors, Inc., [109] was definitely under-  
capitalized and unable to operate successfully with

its then capitalization; that Northrop Aircraft, Inc., would not pay or guarantee the obligations of Salsbury Motors, Inc.; that Northrop Aircraft, Inc., had determine that it would not advance any additional monies to Salsbury Motors, Inc.; that Salsbury Motors, Inc., was not paying, to unsecured creditors, the current obligations as they became due. That notwithstanding this knowledge on the part of Bank of America, in response to many individual credit inquiries by creditors and prospective creditors who are now unpaid and unsecured trade creditors in the within reorganization proceedings, and in response to inquiries from credit agencies for the purpose of having said agencies furnish the said information to creditors or prospective creditors of the debtor herein, prior to bankruptcy, Bank of America informed such persons that the financial condition of Salsbury Motors, Inc., was satisfactory, that it appeared to have an excellent record for trade payments; that it was a wholly owned subsidiary of Northrop Aircraft, Inc., and intimated that Northrop Aircraft would supply all the necessary financing and capital; that no revelation was made that the obligations owing to the Bank of America were in default and had to be renewed or extended without payment thereof; that no revelation was made that the trust deed encumbrance held by the Bank of America on the real property of the Debtor was likewise security for other apparently unsecured obligations of the Debtor held by the Bank of America.

## VIII.

That the current unpaid trade creditors in the within reorganization proceedings extended credit to the debtor substantially in reliance upon the position taken by the Bank of America and the misinformation circulated by it in connection with the financial condition of the Debtor and the purported financial support thereof by Northrop Aircraft, Inc.; that the Bank of America well knew that the said creditors would so rely upon the facts as [110] alleged hereinabove in extending credit to the Debtor herein.

Wherefore, your petitioner prays that this Court make an order directing Bank of America to appear and show cause why: (1) any payment on the claim of Bank of America, against the within estate, as finally allowed, should not be subordinated to the payment of all other creditors; (2) if paragraph (1) is denied, why Bank of America should not be subordinated with reference to the \$75,000.00 herein above described to the extent that it does not participate in any dividends from the said \$75,000.00 until all other creditors are paid in full.

Dated this 20th day of January, 1949.

/s/ GEORGE T. GOGGIN,  
Receiver.

Of Counsel:

/s/ MARTIN GENDEL.

State of California,  
County of Los Angeles—ss.

George T. Goggin being by me first duly sworn,  
deposes and says:

That he is the petitioner in the above-entitled matter; that he has read the foregoing supplement to Petition of Receiver for Order Subordinating Claims of Bank of America and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ GEORGE T. GOGGIN.

Subscribed and sworn to before me this 20th day of January, 1949.

[Seal] /s/ ESTHER ANDERSON,  
Notary Public in and for the County of Los Angeles, State of California.

Receipt of Copy Acknowledged.

Filed January 21, 1949.

HUGH L. DICKSON,  
Referee.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE RE:  
BANK OF AMERICA

Upon Reading and filing the verified petition of George T. Goggin, as Receiver, with reference to the subordinating claims of Bank of America, and upon motion of Martin Gendel, one of his counsel, and good cause appearing therefor, Bank of America National Trust & Savings Association is hereby directed to appear before the Hon. Hugh L. Dickson, Referee in Bankruptcy, in his courtroom located on the 3rd floor of the Federal Building, Temple and Spring Streets, Los Angeles, California, on the 16th day of September, 1948, at the hour of 2 p.m., or as soon thereafter as counsel can be heard, then and there to show cause why the petition aforesaid, a copy of which accompanies the within order to show cause, should not be granted.

This order to show cause may be served by duly serving copies upon the law office of Hugo A. Steinmeyer, as attorneys for Bank of America, said service to be made at least 5 days before the date of the above hearing.

Dated this 30 day of July, 1948.

/s/ HUGH L. DICKSON,  
Referee in Bankruptcy.

Filed July 30, 1949.

HUGH L. DICKSON,  
Referee. [113]

[Title of District Court and Cause.]

AGREEMENT OF INDEMNITY OF NORTH-  
ROP AIRCRAFT, INC., AND ORDER OF  
COURT APPROVING SAME

Whereas, pursuant to the provisions of the "Debtors' Proposed Second Amended Plan of Arrangement" dated July 7, 1948, and approved by order of the Honorable Hugh L. Dickson under date of July 30, 1948 (herein called the "Plan"), Northrop Aircraft, Inc., (herein called "Northrop") agreed to execute certain indemnity agreements, and

Whereas, pursuant to said Plan and the undertakings therein, George T. Goggin, Receiver, has paid out dividends to creditors of Salsbury Motors, Inc., without reserving funds to [114] pay a dividend on the claim of Northrop, and

Whereas, said estate may by final order of the Court be held not to be relieved from legal liability to pay a dividend on said claim of Northrop,

Now, Therefore, in consideration of the above and for the considerations set forth in Article V 2 of said Plan, Northrop hereby undertakes and promises as follows:

1. To indemnify George T. Goggin, as receiver of this estate:

a. Against and to hold him harmless from any and all loss, liability, claims, damages and expenses incurred by him or which he may have become liable for by reason of an order becoming final beyond appeal in the above-entitled proceeding determining



that the claim of Northrop was and is entitled to participate and share in the dividends upon an equal basis with other creditors, and that the Bank of America National Trust & Savings Association (herein called the "Bank") is entitled to receive dividends on the Northrop claim to the extent necessary to satisfy the claim of the Bank against the debtor; it being understood that the liability of Northrop under this paragraph 1-a is in the approximate sum of \$90,000.00 and shall not be increased by reason of any increase in the claim of the Bank over and above its present claim of \$198,818.44 or by reason of any subordination of such claim of the Bank in whole or in part to the claims of other general creditors with respect to the funds in the hands of George T. Goggin as receiver or any part thereof or as a result of any other litigation, controversy or settlement between said George T. Goggin as receiver and the Bank which affects the status or the amount of the said claim;

b. Against and to hold him harmless from all loss, [115] liability, claims, demands and expenses which the said George T. Goggin, as receiver of this estate, may sustain or become liable for by reason of:

(1) The statutory liability if any to make payment into the Referee's Salary Fund because of the payment, if any, made under paragraphs 1-a or 2-b hereof;

(2) Actual costs and attorneys' fees incurred by George T. Goggin, as receiver, in the prosecution or defense of the litigation involv-

ing the Northrop claim and the right of the Bank to receive dividends thereon, in such sums as may be fixed by the above-entitled Court.

2. Forthwith upon an order becoming final beyond appeal adjudging that the claim of Northrop is entitled to participate in dividends upon an equal basis with other creditors and that the Bank is entitled to receive the dividends on said claim to the extent necessary to satisfy its claim, to discharge and satisfy the within indemnity agreement by either:

a. Obtaining a written release and satisfaction from the Bank in favor of the Receiver of this estate of all claims of the Bank against the receiver with respect to the liability herein indemnified against; or,

b. Paying to the receiver of the estate the amount required to be paid by the receiver to the Bank pursuant to the provisions of paragraph 1-a hereof.

3. To pay to the receiver of this estate the amount or amounts required to be paid by the provisions of subdivisions (d) and (e) of paragraph No. 2 of Article V of the Second Amended [116] Plan of Arrangement; said payment to be made by Northrop upon the order involving the contentions of the Bank herein becoming final beyond appeal.

4. Northrop agrees that the above-entitled Court shall retain jurisdiction of the subject matter and parties to this agreement pending the final satisfaction or discharge of this agreement and that exe-

cution or other process of this Court may issue for such purpose.

In Witness Whereof said Northrop Aircraft, Inc., has executed this indemnity agreement this 19th day of November, 1948, by its officers thereunto duly authorized.

NORTHROP AIRCRAFT, INC.,

By /s/ C. N. MONSON.

[Seal] By /s/ GEORGE GORE.

The foregoing indemnity agreement is hereby approved as to form.

/s/ MARTIN GENDEL,

Of Counsel for George T.  
Goggin as Receiver.

HUGO A. STEINMEYER,

JOHN E. WALTER,

G. L. BERREY,

ROBERT H. FABIAN,

By /s/ ROBERT H. FABIAN,

Counsel for Bank of America National Trust &  
Savings Association.

It Is Hereby Ordered :

1. That the foregoing indemnity agreement is approved and ordered filed with the Clerk of this Court; [117]

2. That this Court retains jurisdiction of the subject matter and parties to the said agreement pending its final performance or discharge and that

execution and other process of this Court may issue for such purpose.

Dated this 23 day of Nov., 1948.

/s/ HUGH L. DICKSON,  
Referee in Bankruptcy.

I, George Gore, Secretary of Northrop Aircraft, Inc., hereby certify that a meeting of the Board of Directors of said Corporation was duly held at its offices in the City of Hawthorne, State of California, on June 23, 1948; that at said meeting a majority and quorum of said Directors were present and voting throughout; and that the following paragraphs are a true and correct copy of a portion of the minutes of said meeting and that the resolutions set forth therein are now in full force and effect:

“Mr. Gore reported on the transactions since February, 1948, affecting Salsbury Motors. He explained that the Receiver had filed a petition in the Bankruptcy Court seeking disallowance of the Northrop claim against the estate and also asking that an order be entered requiring Northrop to pay the entire deficiency remaining after all assets of the estate had been distributed to creditors. This deficiency was presently estimated at \$380,000. He said that certain officers of the corporation had proposed to the Receiver (a) that Northrop pay the estate \$75,000 in full settlement of all claims of all creditors against Northrop and (b) that Northrop subordinate all of its right, title and interest in and

to the Northrop claim against the estate to the claims of all other creditors. This proposal is acceptable to the creditors other than the Bank of America. The Bank is taking the position that the Northrop claim against the estate is valid and that the bank is entitled to the dividend payable upon it. In order to meet the bank's objections to the proposal, officers of the corporation had offered to execute, on behalf of the corporation, an indemnity agreement protecting the Receivership estate in the event final judgment of the Court were in favor of the bank's contentions. The exact amount of the indemnity cannot be fixed because the Receiver does not now know what reductions he may be able to effect in the claims as filed and scheduled. On the basis of estimates made by the Receiver and his attorney, it is believed that this indemnity will be in the amount of approximately \$87,140. It could run as high as approximately \$101,000 if no reductions at all are made in the claims as now filed and scheduled. Negotiations with the Receiver and the bank are continuing. The Board approved of the action of the officers in making the offer to pay the Receivership \$75,000 and to subordinate the corporation's interest in the Northrop claim to the claims of all other creditors. General authority was conferred to conduct negotiations along the lines above set forth, including the execution of the indemnity agreement if necessary. Mr. Millar thought these decisions should be incorporated in formal resolutions, and accordingly, upon motion of Mr. Pederson, seconded



by Mr. McDuffie, [119] the following resolutions were unanimously adopted:

“Whereas this corporation has filed its claim for approximately \$1,345,000 against Salsbury Motors, Inc., Debtor in a Chapter XI proceeding; and

“Whereas, the Receiver of said Debtor, on behalf of the estate and of all creditors, has filed a petition in the Bankruptcy Court requesting that said claim be disallowed and further requesting that the Court order this corporation to pay the entire deficiency, presently estimated at \$380,000; and

“Whereas a written proposal has been made on behalf of this corporation for settlement of the asserted claim by the payment to the estate of \$75,000 and the subordination of all of this corporation’s interest in the Northrop claim against the estate to the claims of all other creditors, which offer will herein be called the ‘Offer of May 28, 1948’; and

“Whereas Bank of America contends that by reason of a subordination agreement dated September, 1946, between said bank and this corporation, the bank is the equitable owner or has an equitable lien upon the claim of this corporation against the Debtor and is entitled to any dividend payable thereupon, up to the amount required to make it whole; and

“Whereas it may be desirable and beneficial to this corporation to meet this claim of the bank by the execution of an indemnity agreement, payment under which will be dependent upon the bank establishing in court its contentions with respect to



ownership or interest in the Northrop claim, which indemnity agreement will be in an amount indeterminate at this time, but which could vary from approximately \$87,140 to \$101,000, depending upon the aggregate amount of claims against the estate; and

“Whereas outside counsel for this corporation after a careful investigation of the facts and the law and after extended negotiations with the Receiver, his attorney and the Creditors Committee of the Debtor, have recommended the foregoing settlement as beneficial to the corporation under the circumstances; and

“Whereas this Board of Directors deems said settlement to be to the best interest of this [120] corporation and its shareholders in that the same is a reasonable and beneficial compromise of a bona fide controversy in which a much greater liability might be imposed upon the corporation; and

“Now Therefore Be It Resolved that the acts of the officers of this corporation in making the Offer of May 28, 1948, in settlement of the claims made against this corporation by the Receiver and the creditors of Salsbury Motors, Inc., be and they hereby are ratified and approved as the acts of this corporation; and

“Resolved that the officers of this corporation be and they hereby are authorized to continue negotiations with the Receiver and the Bank of America and to offer if necessary, in addition to the consideration set forth in the Offer of May 28, 1948, to

execute an indemnity agreement in the amount and upon the terms as above set forth; and

“Resolved that if necessary the officers are also empowered to include in any proposal for settlement an offer to pay (a such amount as may be required to be paid into the Referee’s fund in case the bank is successful in its contentions with respect to the Northrop claim and (b) costs and reasonable attorney’s fees of the Receiver in resisting the contentions of the bank.”

In Witness Whereof, I have hereunto set my hand as Secretary of said Corporation, and affixed the corporate seal this 29th day of October, 1948.

[Seal]      /s/ GEORGE GORE,

Secretary, Northrop  
Aircraft, Inc.

Filed Nov. 23, 1948.

HUGH L. DICKSON,  
Referee.

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[Title of District Court and Cause.]

RELEASE AND SATISFACTION  
OF INDEMNITY AGREEMENT

Whereas, pursuant to the “Debtor’s Proposed Second Amended Plan of Arrangement” dated July 7, 1948, (herein called the Plan) approved by an order of the Honorable Hugh L. Dickson under date of July 30, 1948, Northrop Aircraft, Inc. (herein

called Northrop), agreed to execute certain indemnity agreements required by said Plan, in order to permit the Receiver herein to pay a general dividend to creditors, from the assets then in the hands of the Receiver, without reserving therefrom an amount [122] sufficient to pay a like dividend upon the claim of Northrop filed herein, and

Whereas, pursuant to the said Plan Northrop did thereafter execute and file herein an Agreement of Indemnity dated November 19, 1948, which agreement was approved by an order of the Referee dated November 23, 1948, and

Whereas, the undersigned Bank of America National Trust and Savings Association, a creditor herein, has asserted the right to receive dividends upon the claim of Northrop filed herein to the extent necessary to pay its claim in full, and

Whereas, Northrop has paid or agreed to pay to the undersigned an amount equal to the amount that it would have received if it had received, from the assets in the hands of the Receiver at the date of confirmation of the Plan, a dividend upon Northrop's claim, at the same rate of dividends paid to creditors generally, to the extent necessary to pay its claim in full.

Now, Therefore, the undersigned Bank of America National Trust and Savings Association does hereby release and discharge George T. Goggin, the Receiver herein, and the estate of the Debtor herein, of and from any and all liability to pay to the undersigned any dividend upon the claim of

Northrop from the assets of the estate in the hands of the Receiver at the date of confirmation of the said Plan.

It is expressly understood that the undersigned Bank does not release or waive any right that it may have to receive dividends upon the claim of Northrop in the same percentage as is paid upon general claims, as to any assets received by the Receiver subsequent to the date of confirmation of the Plan, including, but without being limited thereby, any assets recovered by the Receiver under his asserted right to recover [123] from the undersigned Bank certain items upon which the undersigned claimed a banker's lien and which have heretofore reduced the amount of the claim filed by the undersigned herein.

Dated December 23, 1948.

BANK OF AMERICA  
NATIONAL TRUST AND  
SAVINGS ASSOCIATION,

By /s/ [Indistinguishable],  
Vice President.

[Seal] By /s/ [Indistinguishable],  
Assistant Secretary.

Filed Jan. 6, 1949.

HUGH L. DICKSON,  
Referee. [124]

[Title of District Court and Cause.]

RESPONSE TO ORDER TO SHOW CAUSE RE  
PETITION OF RECEIVER FOR ORDER  
SUBORDINATING CLAIMS OF BANK OF  
AMERICA NATIONAL TRUST AND SAV-  
INGS ASSOCIATION

Comes now Bank of America National Trust and Savings Association and in response to the order to show cause above described asserts the following:

1. This Court has no jurisdiction to entertain the Receiver's petition for the reason that objections have heretofore been filed to the claim of Bank of America National Trust and Savings Association, and the order of approval of said claim and all matters in connection therewith are pending on appeal in the Court of Appeals for the Ninth Circuit. Until determination of said appeal this Court has no jurisdiction of the subject matter of the Receiver's petition.

2. This Court has no jurisdiction to hear and determine said controversy for the reason that the order confirming the second amended plan of arrangement under Chapter XI of the Bankruptcy Act disposed of and finally determined all matters in [125] connection with the estate of the above-named debtor except only the jurisdiction and power to determine the amount and validity of claims. The general powers of the Court under the Bankruptcy Act have been exhausted by the order approving the second amended plan of ar-

rangement, and the Court has no jurisdiction to determine controversies between creditors with respect to priority of claims.

3. George T. Goggin, as Receiver herein, has no power or authority to file the petition for order to show cause above described for each of the following reasons:

(a) The order confirming the second amended plan of arrangement granted power and authority to George T. Goggin as Receiver and disbursing agent to object to any and all claims with like effect as if he were acting in the capacity of a Trustee in Bankruptcy but reserved or granted no other additional powers, and said George T. Goggin is acting entirely beyond the scope of the power and authority reserved to him by the order confirming the second amended plan of arrangement in the filing and prosecution of the above-designated order to show cause.

(b) The subject matter of the Receiver's petition for an order directing the subordination of the claim of said Bank is not lawfully the basis of any proceeding initiated by a Receiver or disbursing agent or a Trustee in Bankruptcy. The facts purportedly alleged in the Receiver's petition and supplement to petition if true might constitute the basis of a proceeding by a creditor asserting prejudice by reason of alleged misinformation, but neither the estate of the bankrupt nor the Receiver, disbursing agent or any Trustee has any interest in any such controversy. [126]



4. The facts purportedly alleged in the Receiver's petition and the supplement to the Receiver's petition if true do not constitute lawful grounds for the relief therein asked.

Wherefore, said Bank prays that the Receiver's petition be denied and the order to show cause issued thereon be dismissed.

Dated this 2d day of March, 1949.

/s/ HUGO A. STEINMEYER,

/s/ ROBERT H. FABIAN,

Attorneys for Bank of America National Trust and Savings Association.

Filed Mar. 2, 1949.

HUGH L. DICKSON,

Referee. [127]

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[Title of District Court and Cause.]

NOTICE OF MOTION BY GEORGE T. GOGGIN, AS RECEIVER, TO RECONSIDER RULING ON MOTION OF BANK OF AMERICA OBJECTING TO THE JURISDICTION OF THE BANKRUPTCY COURT RE: SUBORDINATION HEARING

To: Bank of America National Trust & Savings Association, and Hugo A. Steinmeyer and Robert H. Fabian, its attorneys:

You and Each of You will please take notice that on Friday, March 18, 1949, at the hour of 10:00

o'clock a.m., or as soon thereafter as counsel can be heard in the courtroom of the above-entitled court, Room 343 Federal Building, Los Angeles, California, before the Honorable Hugh L. Dickson, Referee in Bankruptcy, George T. Goggin, as Receiver, will move the above-entitled Court to reconsider the oral ruling made by the said Referee on March 2, 1949, sustaining the motion of Bank of America National Trust & Savings Association in objecting to the jurisdiction of the said Referee to proceed with the hearing on the order to show cause issued on July 30, 1948, involving relief prayed for by the said Receiver for an order subordinating the claims of Bank of America; said ruling has not yet been signed or entered.

Said motion will be made and based upon the petition, [128] and supplement to petition, in support of the aforesaid order to show cause, issued on July 30, 1948, upon the terms and provisions of the debtor's Second Amended Plan of Arrangement under Chapter XI, upon the consents to said Second Amended Plan, upon the order of the said Referee of July 30, 1948, confirming the said debtor's Second Amended Plan, and upon all of the papers and pleadings now on file in the within proceedings; upon the further ground that to deny jurisdiction to hear the subordination order to show cause contrary to the express provisions of the Second Amended Plan, upon which provisions the consent of the creditors was obtained, and incorporated expressly in the order approving the Second Amended

Plan, would be to use the Bankruptcy Court as a means of creating a result which would work a fraud and injustice upon all of the unsecured creditors in the within bankruptcy proceeding; said motion is further made and based upon the Points and Authorities attached hereto and made a part hereof by reference as though set forth verbatim.

Dated: March 4, 1949.

GEORGE T. GOGGIN,  
As Receiver,

By MARTIN GENDEL,  
Of Counsel.

Affidavit of Service by Mail Attached.

Filed Mar. 8, 1949.

HUGH L. DICKSON,  
Referee. [129]

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[Title of District Court and Cause.]

ORDER ON PETITION OF RECEIVER FOR  
ORDER SUBORDINATING CLAIMS OF  
BANK OF AMERICA AND ON SUPPLE-  
MENTAL PETITION THERETO

The above matter came on for hearing on March 2, 1949, upon an Order to Show Cause directed to Bank of America National Trust and Savings Association, the Petition of Receiver for Order Subordinating Claims of Bank of America, Supple-

ment to Petition of Receiver for Order Subordinating Claims of Bank of America and Response of Bank of America to Order to Show Cause Re Petition of Receiver for Order Subordinating Claims of Bank of America, the Receiver being represented by his attorneys, Gendel and Chichester appearing by Martin Gendel, and the Respondent, Bank of America National Trust and Savings Association, being represented by its attorneys, Hugo A. Steinmeyer and Robert H. Fabian, and the matter having been argued by the respective counsel and submitted to the Court for its decision, and the Court having directed an order denying the petition of the Receiver and directing that the Order to Show Cause thereon be dismissed; and

George T. Goggin, as Receiver, having filed herein a [150] Motion to Reconsider the Ruling of the Court thereon prior to the entry of such order; and

The matter having again come on for hearing on March 18, 1949, the Receiver being represented by his attorneys, Martin Gendel and Frank M. Chichester, and the Respondent, Bank of America National Trust and Savings Association, being represented by its attorneys, Hugo A. Steinmeyer and Robert H. Fabian, and the matter having again been argued by respective counsel and the Court being fully advised in the premises; and

It appearing to the Court that the objections set forth in the said response of Bank of America National Trust and Savings Association are well founded; and

It appearing that the Court has no jurisdiction over the controversies and issues raised by the said Petition and response thereto; and

It further appearing to the Court that the said Receiver is without power or authority to prosecute the proceedings initiated by the said Petition and Order to Show Cause;

It Is Ordered that the said Petition of the Receiver and Supplemental Petition of Receiver thereto be denied and the Order to Show Cause thereon dismissed.

Dated this 19 day of March, 1949.

/s/ HUGH L. DICKSON,  
Referee.

Approved as to form only:

GENDEL AND CHICHESTER.

Receipt of Copy Acknowledged.

Filed Mar. 19, 1949.

HUGH L. DICKSON,  
Referee. [151]

[Title of District Court and Cause.]

OBJECTIONS OF RECEIVER TO PROPOSED  
“ORDER ON PETITION OF RECEIVER  
FOR ORDER SUBORDINATING CLAIMS  
OF BANK OF AMERICA AND ON SUP-  
PLEMENT TO PETITION THERETO”

To The Honorable Hugh L. Dickson, Referee In  
Bankruptcy:

Comes now George T. Goggin, as Receiver of the above-named debtor, through his counsel, pursuant to Rule 7(a) of the Rules of the United States District Court for the Southern District of California, and objects to the proposed “Order on Petition of Receiver for Order Subordinating Claims of Bank of America and on Supplemental Petition Thereto” (hereinafter referred to as “proposed order”).

I.

The following quoted provisions of the proposed order go beyond the oral order of this Honorable Court as announced at the conclusion of the hearings on March 2 and March 18, 1949:

A. “It appearing to the Court that the objections set forth in the said response of Bank of America National Trust and Savings Association are well founded.” (Lines 10 to 12 on page 2 of the proposed order.) [153]

B. “It further appearing to the Court that the said Receiver is without power or authority to



prosecute the proceedings initiated by the said Petition and Order to Show Cause.” (Lines 16 to 18 of the proposed order, page 2.)

## II.

The language contained on Lines 13 to 15, page 2, of the proposed order does not clearly reflect the ruling of the Court as orally announced at the conclusion of the hearings on March 2 and March 18, 1949.

## III.

The reasons for the foregoing objections to the proposed order are as follows:

On March 2, 1949, the Bank of America filed a document entitled “Response to Order to Show Cause Re Petition of Receiver for Order Subordinating Claims of Bank of America National Trust and Savings Association” and set forth therein four separate alleged objections to the petition of the Receiver. After the hearing on March 2, 1949, during which the Bank of America urged each of the objections contained in said document, this Honorable Court clearly limited its ruling solely to the objection numbered “2” in the Bank’s said response to the order to show cause. Said objection numbered “2” read as follows:

“2. This Court has no jurisdiction to hear and determine said controversy for the reason that the order confirming the second amended plan of arrangement under Chapter XI of the Bankruptcy Act disposed of and finally determined all matters

in connection with the estate of the above-named debtor except only the jurisdiction and power to determine the amount and validity of claims. The general powers of the Court under the Bankruptcy Act have been exhausted by the [154] order approving the second amended plan of arrangement, and the Court has no jurisdiction to determine controversies between creditors with respect to priority of claims.”

That the Court’s oral ruling was clearly limited to the foregoing contention of the Bank unquestionably appears from the comments of this Court at the conclusion of the hearing held herein on March 2, 1949, particularly at pages 63 to 65 of the Reporter’s Transcript of that hearing. In this connection, your attention is directed to the colloquy between the Court and counsel between lines 9 and 18 on page 65 of said Transcript, where the following appears:

“Mr. Gendel: My position is two-fold: If the Court is going to reserve its ruling purely on the point of jurisdiction, when we seek a review we would limit our point to that, but if the Court would extend its ruling and find the facts alleged in the petition, pursuant to the motion made this morning, are not sufficient to constitute a cause of action then we would be in an embarrassing position. We would like leave to amend.

“The Referee: I will limit my ruling then solely to the lack of jurisdiction.”

In view of the foregoing, the attempt by the Bank

of America in its proposed order to base it upon all the other grounds of objections set forth in its Response goes considerably beyond the above-quoted limitation included by this Court in its ruling.

#### IV.

The ruling following the hearing on March 18, 1949, on the Receiver's motion "To Reconsider Ruling on Motion of Bank of America Objecting to the Jurisdiction of the Bankruptcy Court Re Subordination Hearing" could not possibly be construed to broaden [155] the original ruling made on March 2, 1949, containing the above-quoted limitation to the jurisdictional objection. This is made clear not only by the fact that all that was involved on the March 18th hearing was the Receiver's motion to reconsider the earlier ruling, but also because of the Court's statement at the conclusion of the March 18th hearing to the effect that the Court was not convinced that it had erred in its earlier ruling and that the motion to reconsider was therefore denied.

#### V.

There is attached hereto a form of proposed order denying the Receiver's petition for order subordinating the claims of the Bank of America, which we respectfully submit completely and accurately sets forth the ruling of this Honorable Court.

#### VI.

While we sincerely and strenuously urge the objections hereinabove contained, if the Court should

overrule these objections and see fit to sign an order such as that proposed by the Bank of America, we hereby respectfully request leave to file an amended petition of the Receiver for an order subordinating the claims of the Bank of America, a copy of which is attached hereto, marked Exhibit "A" and by this reference made a part hereof as though set forth in full herein. The reason for this request is that the proposed order contains a recital "that the objections set forth in the said Response of Bank of America National Trust and Savings Association are well founded," and that the said Response contains the following as Item No. 4 thereof:

"4. The facts purportedly alleged in the Receiver's petition and the supplement to the Receiver's petition if true do not constitute lawful grounds for the relief therein asked."

During the hearing on March 2nd, when counsel asked the Court for leave to amend if the Court was ruling that the petition and [156] supplement to petition did not state facts sufficient to constitute a cause of action, the Court indicated that such leave would be granted. This appears in the following language contained between lines 8 and 25: (Transcript page 64).

"Mr. Gendel: At this time, Your Honor, in order to keep the record clear, if the Court is of the opinion that the petitions are at all lacking in specific allegations, we ask leave on behalf of the Receiver to amend the petition and the supplement with reference to the subordination of the Bank of

America. This motion was presented only this morning.

“The Referee: I don’t know why you should not have leave to do that. How long do you want?”

“Mr. Steinmeyer: May I be heard on that point?”

“The Referee: Yes, sir. Don’t you want to give them a chance? Give every man his chance, Mr. Steinmeyer.

“Mr. Steinmeyer: I think that is right, Your Honor. I think the petition now, however, goes so much further than the evidence will show.

“The Referee: I don’t know about that, of course. My only idea was to give them an opportunity to get their petition in a form that would allege something . . .”

It was immediately after the foregoing discussion that the Court expressed its intention to limit its ruling to the jurisdictional question only and not to any alleged failure to state a cause of action.

Dated: March 18, 1949.

Respectfully submitted,

GENDEL AND CHICHESTER,

By /s/ MARTIN GENDEL,

Of Counsel for Receiver.

Filed Mar. 19, 1949.

HUGH L. DICKSON,

Referee. [157]

[Title of District Court and Cause.]

AMENDED PETITION OF RECEIVER FOR  
AN ORDER SUBORDINATING CLAIMS  
OF BANK OF AMERICA

To The Honorable Hugh L. Dickson, Referee in  
Bankruptcy:

Comes now your petitioner, George T. Goggin as receiver of Salsbury Motors, Inc., debtor herein, and with leave of Court first had and obtained files this his Amended Petition for an Order Subordinating the Claims of the Bank of America National Trust & Savings Association, and respectfully represents as follows:

I.

That he is the duly appointed, qualified and acting Receiver in the within Chapter XI proceeding.

II.

That heretofore the Bank of America National Trust & Savings Association (hereinafter referred to as "Bank"), filed a claim in the within bankruptcy proceeding for an amount in the sum of \$601,482.80 plus interest; that the amount now owing to Bank of America is the sum of \$198,-818.44; this sum represents the unpaid balance remaining after allowance of the [174] banker's lien and set-off pursuant to order of Referee Dickson dated March 22, 1948, which order is now on appeal by your petitioner.



## III.

That during the month of February, 1946, at or about the time Northrop Aircraft, Inc. (hereinafter called "Northrop"), acquired all the capital stock of the debtor herein, negotiations were carried on by and between the debtor, Northrop, and the Bank of America for the purpose of arranging financing for the debtor. During said negotiations Bank of America requested Northrop, as the parent and owner of all the capital stock of the debtor, to guarantee any loans made by the Bank to the debtor. After Northrop expressly refused to make such guarantee, on or about February 13, 1946, written agreements were entered into by and between the Bank of America, Northrop and the debtor, providing in substance that as a condition precedent to the granting of credit applied for by the debtor, the Bank of America required the execution of an agreement by Northrop to the effect that Northrop, prior to the making of any loans by the Bank, would lend not less than \$600,000 to the debtor, and further, that the indebtedness of the debtor to Northrop should be subordinate to all indebtedness of the debtor to the Bank until all of said indebtedness of the debtor to the Bank had been paid in full. That Northrop did in fact enter into such a subordination agreement with the Bank of America.

## IV.

That thereafter and on or about September 4, 1946, the aforesaid written agreements were supplemented by subsequent written agreements between

Northrop and the Bank of America. That the written agreement between said parties dated September 4, 1946, required Northrop to lend or advance \$775,000 to the debtor in addition to the funds theretofore advanced to the [175] debtor, and did subordinate all of Northrop's loans, advances, or indebtedness to the bank's loans to the debtor. That no notice of the existence of the subordination agreement either as originally drafted or as amended was ever given generally to the creditors of the debtor by the bank.

## V.

That each of said loan agreements between the debtor and the bank required the debtor to give the bank access to the books and records of the debtor pertaining to the debtor's financial condition and required the debtor to give the bank regular weekly, monthly and yearly financial reports as to the financial condition of the debtor. That the debtor complied with the loan agreement, and in fact gave the bank free access to all books and records of the debtor pertaining to the debtor's financial condition and gave the bank regular weekly, monthly, and yearly financial reports. That at all times hereinafter mentioned the Bank of America had full and complete knowledge of the financial affairs and the true financial condition of the debtor.

## VI.

That on or about February 13, 1946, Bank of America loaned to the debtor the sum of \$180,000,

which loan was evidenced by a promissory note bearing said date, which note was secured by a deed of trust dated February 13, 1946, in which the debtor was trustor, the Corporation of America, a California corporation, was trustee, and the Bank of America was beneficiary. That at all of the times hereinafter mentioned said deed of trust was in full force and effect. That the said deed of trust covered the plant of the debtor in the city of Pomona, state of California, and showed on the face thereof that it was given to secure the above-mentioned promissory note in the sum of \$180,000, and also to secure "payment of such additional amounts as may be hereafter owed by beneficiary, or its successor, to the trustor, . . . or any successor in interest of the trustor, with interest thereon, and any [176] other indebtedness or obligation of the trustor, . . . and any present or future demands of any kind or nature which the beneficiary or its successor may have against the trustor, . . . whether created directly, or acquired by assignment, whether absolute or contingent, whether due or not, whether otherwise secured or not, or whether existing at the time of the execution of this instrument, or arising thereafter."

## VII.

That the Bank of America knew the following facts at the time of their occurrence and at all times thereafter:

1. That the debtor was insolvent at all times subsequent to August 31, 1946.

2. That in December of 1946 the liabilities of the debtor exceeded its assets in a sum in excess of \$300,000.

3. That from September, 1946, to the date of the commencement of the within proceedings the debtor's books and records showed that it was losing from \$18,000 to \$90,000 during each month of its operations during said period.

4. That the debtor was in default under its loan agreement with the Bank of America at all times after January, 1947.

5. That subsequent to January 1, 1947, all persons who extended credit to the debtor herein did so upon the belief that Northrop would cause any indebtedness of the debtor to be paid.

6. That from and after January 1, 1947, the debtor wrote numerous letters in answer to credit inquiries made by vendors and prospective vendors of the debtor informing the recipients thereof that other vendors had relied upon the financial status of Northrop in extending credit to the debtor and refusing to give any financial information upon the ground that, being a wholly owned subsidiary of Northrop, the financial condition of Northrop should be considered and not that of the debtor.

7. That on or about February 13, 1946, and thereafter, [177] Northrop expressly refused to guarantee the payment of the indebtedness of the debtor herein to the Bank.

8. That at all times subsequent to February 13, 1946, the debtor gave the Bank of America as a credit reference to all persons making credit inquiries.

9. That persons making inquiry of the Bank of America as to the financial condition of the debtor would rely, and did in fact rely, upon the information furnished by the Bank in extending credit to the debtor herein.

10. That persons would rely, and did in fact rely, upon information contained in credit and financial reports pertaining to the debtor as supplied by commercial firms engaged in the business of giving such reports, including the reports made pertaining to the debtor by Dun & Bradstreet.

11. That during the month of May, 1947, a determination had been made by the board of directors of Northrop that no additional funds should be advanced by Northrop to Salsbury.

12. That during the month of May, 1947, and at all times thereafter until the filing of the petition in the within proceeding, Northrop was making strenuous efforts to sell the assets of the debtor.

13. That the debtor, at all times subsequent to January 1, 1947, in the usual course of its business operations maintained a commercial account with the Bank of America with average monthly balances in excess of \$100,000.

14. That at all times subsequent to January 1,

1947, in the usual course of business operations of the debtor, the debtor deposited with the Bank notes and other commercial paper for collection only, and that the value of such notes and commercial paper was in excess of \$150,000 in each month during such period.

### VIII.

That from time to time throughout the period from February [178] of 1946 to the date of the filing of the petition commencing the within proceedings the Bank received numerous written and oral inquiries from persons who had been referred to the Bank by the debtor herein concerning the financial condition of the debtor. That the Bank knew that the purpose of such inquiries was to obtain information to be used in determining whether or not credit should be extended to the debtor. That the Bank of America with full knowledge of the facts mentioned in Paragraph VII nevertheless gave such inquirers information to the effect that the debtor was in sound financial condition, that its credit relationship with the Bank of America was good, and that the debtor was a wholly owned subsidiary of Northrop, whose officers and employees were controlling and assisting in the management and operation of the debtor. That the Bank of America did not inform such inquirers of the facts in their knowledge as stated in the preceding paragraphs.

### IX.

That during the period from May of 1946 to the date of the commencement of the within proceed-



ings the Bank of America received inquiries from credit agencies such as and including Dun & Bradstreet. That in response to such inquiries the Bank of America informed the inquirers that during the entire period herein mentioned the financial condition of debtor was satisfactory, that it appeared to have an excellent record for trade payment, and that it was a wholly owned subsidiary of Northrop Aircraft, Inc., that its relationship to the Bank of America was satisfactory, and that the debtor was indebted to the Bank of America on a small six figure unsecured loan. That the Bank of America knew that the information furnished to such credit agencies would be included by such agencies in reports furnished by them to persons who would use such reports in determining whether or not to extend credit to debtor herein. That the Bank of America did not inform any of [179] said credit agencies making such inquiry of any of the facts known by the Bank as more fully set forth in paragraph VII. The Bank did not inform such credit agencies of the provisions of the deed of trust, hereinabove quoted.

#### X.

That the last advance made by the Bank to the debtor herein on an unsecured basis was made on or about November 13, 1946, in the sum of \$100,000. That at all times subsequent to January 1, 1947, the debtor was in default under its written loan agreements with the Bank of America, both with respect

to the monthly payments the debtor was to have made to the bank, and with respect to the maintenance of a minimum working capital by the debtor. That despite said continuing defaults from January 1, 1947, to the date of the commencement of the within proceedings, Bank of America did not at any time exercise any of the rights it had in the event of a default, as are specifically set forth in the aforesaid loan agreements between the Bank and the debtor, the contents of which are too voluminous to mention, but which are well known to the Bank. That during the entire period of the continuing defaults the Bank of America had knowledge that Northrop did not intend to pay any of the debtor's indebtedness to the now existing general unsecured trade creditors, and with the belief on the part of the Bank that only the Bank could compel Northrop to pay any deficiency owing from the debtor to the Bank.

## XI.

That in extending credit to the debtor, all of the persons who are the general unsecured and unpaid trade creditors of the debtor herein and whose claims have been allowed by this Court relied upon and were misled by the conduct of and the credit information given by the Bank of America as hereinabove particularly described. [180]

## XII.

That at all of the times herein mentioned the Bank of America was familiar with and intended

to rely on the hereinabove quoted provision of the deed of trust, in which the debtor was trustor and the Bank of America was beneficiary, to the effect that it was given to secure all advances, past, present and future, made by the Bank to the debtor. That the Bank of America knew that the value of the real estate described in the deed of trust was considerably in excess of the amount of the promissory note in the sum of \$180,000 which said deed of trust was given to secure.

### XIII.

That at all times herein mentioned, the Bank of America intended, in the event of the financial collapse, or the institution of bankruptcy proceedings by or against the debtor, to assert an alleged right of set-off and seizure with respect to all funds in the commercial account of the debtor in the Bank of America.

### XIV.

That at all times herein mentioned, the Bank of America intended to assert an alleged banker's lien and a right of seizure with respect to all notes and commercial paper deposited with the Bank of America by the debtor for collection only, in the event of financial collapse or the commencement of bankruptcy proceedings by or against the debtor.

### XV.

That at all times herein mentioned, in the event of a financial collapse or the commencement of bank-

ruptcy proceedings by or against the debtor, the Bank of America intended to hold Northrop fully liable for all amounts which might be due the Bank by the debtor, notwithstanding the express refusal of Northrop to guarantee the indebtedness of the debtor to the Bank. [181]

## XVI.

That upon being informed, on or about the 19th day of August, 1947, that the officials of Northrop had determined to cause the debtor to file a petition under Chapter XI of the Bankruptcy Act, the Bank of America asserted its alleged right of set-off and thereupon seized the sum of approximately \$162,000.00 which was then in the commercial account of the debtor with the Bank. That thereupon the Bank asserted its alleged banker's lien and converted to its own use the proceeds from the notes and commercial paper deposited with the Bank for collection only by the debtor, from which the Bank of America realized the sum of approximately \$178,000.00. That in asserting its rights under the hereinabove mentioned deed of trust following the commencement of the within proceedings, the Bank contended that the clause thereof hereinabove quoted gave the Bank the right to claim that the deed of trust secured all advances made by the Bank to the debtor in addition to the indebtedness represented by the promissory note in the sum of \$180,000.00, which was the occasion for executing the deed of trust. That there was at the time of the commencement of the within proceedings a balance due in the

sum of approximately \$160,000.00 on the said promissory note. That the real estate described in the deed of trust was then appraised at the sum of \$250,000.00, and the Bank received under the deed of trust \$250,000.00 notwithstanding the fact that only approximately \$160,000.00 was then due on the promissory note which was the only existing indebtedness said deed of trust was given to secure.

## XVII.

That upon the commencement of the within proceedings, the Bank of America asserted against Northrop an alleged moral and legal obligation of Northrop to make the Bank whole with respect to any indebtedness of the debtor to the Bank. That as a result of this assertion by the Bank of America, on or about the 24th [182] day of December, 1948, a written agreement was entered into by and between Northrop Aircraft, Inc., and the Bank of America, by the terms of which Northrop paid thereupon to the Bank the sum of \$90,000.00, and further agreed that in the event the dividends ultimately paid by the Receiver herein on the Bank's claim did not equal the full amount of the Bank's claim as then allowed in the sum of \$198,818.44, Northrop agreed to pay to the Bank such additional amount as might be necessary to bring the total payments to the Bank to the full amount of its claim.

## XVIII.

That by reason of the foregoing facts, your petitioner is informed and believes and therefore alleges that regardless of the dividends paid out of the within proceedings, the Bank of America intends to receive the full amount of its claim against the debtor. That at all times herein mentioned the Bank knew that despite any financial collapse or bankruptcy proceeding of the debtor herein the Bank would assert an alleged right to be paid one hundred cents on the dollar on any and all indebtedness of the debtor to the Bank. That your petitioner is informed and believes, and therefore alleges, that the Bank of America with full knowledge of all of the facts set forth in the within petition misrepresented said facts in the manner described in this petition to all persons who are the now unpaid general unsecured trade creditors of the debtor in the within proceeding, who in reliance upon said misinformation given to them by the Bank, extended credit to the debtor, and who now, because of the insolvency of the debtor and because of the conduct of the Bank, will not receive more than approximately 50% of their respective claims.

## XIX.

That to allow the Bank of America, under the circumstances as hereinabove pleaded, to participate on a parity with the other creditors in the distribution of dividends from the [183] within estate would be unfair, unconscionable, inequitable, and unjust.



## XX.

Without prejudice to the position of the Receiver as hereinabove alleged, but in order to present all of the facts and legal contentions now available to the Receiver with reference to the subject matter of subordination of the claims of the Bank of America, your petitioner further alleges as follows:

That as is reflected in Article V of the approved Second Amended Plan of Arrangement, your petitioner, as Receiver, filed objections to the claim of Northrop Aircraft, Inc. (hereinafter referred to as Northrop), and likewise sought affirmative relief against Northrop on the grounds that it was the "alter ego" of the debtor herein and was responsible for any deficiency in the total amount of the claim after the dividends were paid to creditors; Northrop thereafter made an offer of compromise and settlement which was incorporated in the Second Amended Plan of Arrangement and has therein agreed to pay the sum of \$75,000.00 to your petitioner which payment is predicated upon the aforesaid "alter ego" contention of your petitioner; your petitioner believes, and therefore alleges, that the one creditor who had actual knowledge that it was apparently not the intention of Northrop to be responsible for the obligations of Salsbury, was and is Bank of America; the dealings between the Bank of America and Northrop with reference to Salsbury Motors, Inc., loans were dealings reflected in writing and the Bank of America obtained from Northrop an agreement to subordinate the payment

of any of its loans to the debtor herein until Bank of America was paid in full; but no express assumption or guarantee of liability was obtained by Bank of America from Northrop; therefore, since Bank of America knew that Northrop was not guaranteeing the payment of Salsbury claims it would be inequitable to trade creditors to allow Bank of America [184] to participate in any dividend payable to creditors from the said \$75,000.00.

Wherefore, your petitioner prays that this Court make an order directing Bank of America to appear and show cause why: (1) any payment on the claim of Bank of America, against the within estate, as finally allowed, should not be subordinated to the payment of all other creditors; (2) if paragraph (1) is denied, why Bank of America should not be subordinated with reference to the \$75,000.00 hereinabove described to the extent that it does not participate in any dividends from the said \$75,000.00 until all other creditors are paid in full.

Dated this 18th day of March, 1949.

By /s/ GEORGE T. GOGGIN,  
Receiver.

By /s/ MARTIN GENDEL,  
Of Counsel for Receiver.

State of California,  
County of Los Angeles—ss.

George T. Goggin being first duly sworn, deposes and says:

That he is the petitioner in the above entitled

matter; that he has read the foregoing Amended Petition of Receiver for an Order Subordinating Claims of Bank of America and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

By /s/ GEORGE T. GOGGIN.

Subscribed and sworn to before me this 18th day of March, 1949.

[Seal] /s/ IRENE T. GARCIA,  
Notary Public in and for the County of Los Angeles, State of California.

Filed April 6, 1949.

HUGH L. DICKSON,  
Referee. [186]

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[Title of District Court and Cause.]

PETITION FOR REVIEW OF ORDER OF  
REFEREE DATED MARCH 19, 1949, ON  
PETITION OF RECEIVER FOR ORDER  
SUBORDINATING PAYMENT OF DIVI-  
DEND ON CLAIMS OF BANK OF AMERICA

To the Honorable Hugh L. Dickson, Referee in  
Bankruptcy:

Comes now your petitioner, George T. Goggin, and respectfully represents as follows:

## I.

That he is the duly appointed, qualified and acting Receiver in the within Chapter XI reorganization proceeding; that pursuant to and in accordance with the Second Amended Plan of Arrangement and the order confirming said Plan of Arrangement, your petitioner has the right, powers, and authority of a Trustee in Bankruptcy to the same extent as if there had been an order of adjudication and your petitioner had been appointed the Trustee therein.

## II.

That your petitioner heretofore filed a duly verified petition on July 30, 1948, entitled, "Petition of Receiver for Order Subordinating Claims of the Bank of America"; that thereafter [189] your petitioner was authorized and permitted to file a verified document dated January 20, 1949, entitled, "Supplement to Petition of Receiver for Order Subordinating Claims of the Bank of America"; that on the basis of the aforesaid petition and supplement, an order to show cause was duly issued as against the Bank of America National Trust & Savings Association, hereinafter designated as "Bank of America," which order was dated July 30, 1948, and was duly served upon the respondent, Bank of America.

## III.

That on the 2nd day of March, 1949, a hearing was duly held before the Honorable Hugh L. Dickson, Referee in Bankruptcy, predicated upon the aforesaid petition, supplement thereto, and the order

to show cause; on the aforesaid morning of said hearing the Bank of America served and filed a document entitled, "Response to Order to Show Cause Re Petition of Receiver for Order Subordinating Claims of Bank of America National Trust & Savings Association." The said response to the order to show cause contained the following objections to the Receiver's petition and the supplement thereto:

1. The Bankruptcy Court had no jurisdiction to entertain, hear or determine the controversy alleged in the petition and the supplement thereto;

2. The Receiver had no power or authority to file the petition for order to show cause and/or to obtain the relief therein requested; and

3. The facts alleged in the petition and the supplement thereto did not state a claim against the Bank of America upon which relief could be granted.

Upon the hearing of the order to show cause before the Referee in Bankruptcy on March 2, 1949, the Court orally (and we contend erroneously) ruled that the Bankruptcy Court had no jurisdiction to hear and determine the controversy alleged in the petition and the supplement by reason of the fact that no such power was retained by the Bankruptcy Court in its order confirming the Second Amended Plan of Arrangement.

#### IV.

That on or about the 4th day of March, 1949, your petitioner duly served and filed the following docu-



mentation: "Notice of Motion of George T. Goggin, Receiver, to Reconsider Ruling on Motion of Bank of America Objecting to the Jurisdiction of the Bankruptcy Court Re: Subordinating Hearing;" said notice of motion was accompanied by points and authorities in support of the same, which points and authorities were dated March 7, 1949, and were served on or about said date. After due service of said document a hearing was held thereon on the 18th day of March, 1949, before the Honorable Hugh L. Dickson, Referee in Bankruptcy, and at said time and place the aforesaid Referee orally denied the motion to reconsider; on the 18th day of March, 1949, the same date as the hearing, counsel for the Bank of America served petitioner on review with a document entitled, "Order on Petition of Receiver for Order Subordinating Claims of the Bank of America and on Supplemental Petition Thereto." Said order appears to have been signed on the next day, March 19, 1949, and prior to the consideration by the said Bankruptcy Court of the document entitled by your petitioner herein as follows, and served upon the Bank of America on the 19th day of March, 1949, "Objections of Receiver to Proposed 'Order on Petition of Receiver for Order Subordinating Claims of the Bank of America and on Supplemental Petition Thereto';" that attached to said objections and made a part thereof by reference as though set forth verbatim is the document designated as, "Amended Petition of Receiver for an Order Subordinating Claims of Bank of America." The said order submitted by the Bank of America



and signed by the Referee went considerably beyond the oral ruling of the Court, in that in addition to sustaining [191] the contention of the Bank on the jurisdictional point, to wit, that the Bankruptcy Court had retained no jurisdiction to determine the controversy, the order further provided that "the objections set forth in the said Response of Bank of America National Trust and Savings Association are well founded."

## V.

Thereafter a motion was made by your petitioner on the 2nd and 18th days of March, 1949, whereby the Receiver would be given leave to file an amended petition such as that attached to the "Objections of Receiver to Proposed 'Order on Petition of Receiver for Order Subordinating Claims of the Bank of America and on Supplemental Petition Thereto'." After due notice of said objections, a hearing was held thereon upon the 6th day of April, 1949, before the Honorable Hugh L. Dickson, Referee in Bankruptcy. At the conclusion of said hearing, the Referee overruled the objections made and denied your petitioner's motion to proceed upon the proposed amended petition, although leave was granted "to file" the original of said amended petition.

## VI.

The order from which review is sought herein, dated March 19, 1949, reads as follows:

"The above matter came on for hearing on March 2, 1949, upon an Order to Show Cause directed to

Bank of America National Trust and Savings Association, the Petition of Receiver for Order Subordinating Claims of Bank of America, Supplement to Petition of Receiver for Order Subordinating Claims of Bank of America and Response of Bank of America to Order to Show Cause Re Petition of Receiver for Order Subordinating Claims of Bank of America, the Receiver being represented by his attorneys, Gendel and Chichester appearing by [192] Martin Gendel, and the Respondent, Bank of America National Trust and Savings Association, being represented by its attorneys, Hugo A. Steinmeyer and Robert H. Fabian, and the matter having been argued by the respective counsel and submitted to the Court for its decision, and the Court having directed an order denying the petition of the Receiver and directing that the Order to Show Cause thereon be dismissed; and

“George T. Goggin, as Receiver, having filed herein a Motion to Reconsider the Ruling of the Court thereon prior to the entry of such order; and

“The matter having again come on for hearing on March 18, 1949, the Receiver being represented by his attorneys, Martin Gendel and Frank M. Chichester, and the Respondent, Bank of America National Trust and Savings Association, being represented by its attorneys, Hugo A. Steinmeyer and Robert H. Fabian, and the matter having again been argued by respective counsel and the Court being fully advised in the premises; and

“It appearing to the Court that the objections set forth in the said response of Bank of America

National Trust and Savings Association are well founded; and

“It appearing that the Court has no jurisdiction over the controversies and issues raised by the said Petition and response thereto; and

“It further appearing to the Court that the said Receiver is without power or authority to prosecute the proceedings initiated by the said Petition [193] and Order to Show Cause;

“It Is Ordered that the said Petition of the Receiver and Supplemental Petition of Receiver there-to be denied and the Order to Show Cause thereon dismissed.

“Dated this 19 day of March, 1949.

/s/ HUGH L. DICKSON,  
Referee.

Approved as to form only:

GENDEL AND CHICHESTER,

By /s/ .....,  
Attorneys for Receiver.

Not Approved.”

## VII.

That the aforesaid order of March 19, 1949, is erroneous and contrary to law for the following reasons:

A. The Bankruptcy Court has jurisdiction to grant the relief sought by the petitioner on review herein in the aforesaid petition and supplement and the order to show cause dated July 30, 1948, and the proposed amended petition in connection therewith.

1. The debtor's Second Amended Plan of Arrangement expressly reserves for the Bankruptcy Court complete jurisdiction to grant the relief sought by the petitioner and expressly authorizes your petitioner to present such a petition for an order granting the relief sought therein.

(a) In Article I of the Second Amended Plan, the paragraph pertinent to Class D creditors, to which class it is conceded the Bank of America belongs, provides: "The Court to reserve jurisdiction to determine the [194] amount and validity of all claims and the classification of said claims and all objections that may be made in respect thereto, with like effect and power as if the above named debtor has been adjudicated a bankrupt, and George T. Goggin was the acting Trustee in Bankruptcy. That said George T. Goggin, as Receiver and disbursing agent, shall have the right to object to any and all claims with like effect as if he were acting in the capacity of Trustee in Bankruptcy."

See also Article IV, Article V (expressly referring to subordination proceedings in connection with the claim of the Bank of America); Article VI and Article VII.

2. Jurisdiction to hear and determine the controversy was expressly reserved in the order confirming the debtor's Second Amended Plan of Arrangement.

(a) The order confirming the plan expressly incorporates the plan therein and orders the plan confirmed without any limitation. Thus the above

mentioned provisions of the plan reserving jurisdiction of the Bankruptcy Court would apply with equal force to the order confirming the plan.

(b) The order of confirmation (lines 20-29 of page 3 thereof) expressly provide that "this court retains and reserves jurisdiction to determine the amount and validity of all claims of creditors, both secured and unsecured, and the classification of said claims, and all objections [195] that have heretofore been made or that may be made in regard thereto, with a like effect and power as if the above-named debtor had been adjudged a bankrupt and George T. Goggin were the acting Trustee in Bankruptcy; and that George T. Goggin, as Receiver and disbursing agent, shall have the right to object to any and all claims with like effect as if he were acting in the capacity of a Trustee in Bankruptcy." (Emphasis added.)

3. Any apparent conflict between the order confirming the plan and the plan itself must be resolved in favor of the plan. This is so by reason of the fact that the written consents of creditors to the plan were based upon the plan and not the order (see the formal consent made a part of the record in the within proceedings.) Upon confirmation, the plan is in effect a contract between the debtor and the creditors and cannot be varied or altered without the consent of the contracting parties. No notice was ever given to creditors that the plan to which they consented had been or would be in any way limited or modified by the Bankruptcy



Court, as is required by Sections 364 and 365 of the Bankruptcy Act, as amended.

4. Even in the absence of any express reservation of jurisdiction, either in the plan or the order confirming it, the Bankruptcy Court has inherent jurisdiction to supervise the disbursement of the funds deposited with it under the Plan of Arrangement and to direct its order of payment.

B. The Receiver, your petitioner in review, had the power [196] and duty to have the matters set forth in his petition, the supplement thereto, and the amended petition brought to the attention of the Bankruptcy Court and to have the controversy heard and determined.

1. The above-mentioned provisions of the plan and the order confirming it expressly give the Receiver such authority.

2. The provisions of the plan and the order confirming it give the Receiver all the authority of a trustee in bankruptcy and therefore empowers the Receiver to commence a proceeding such as the one here involved.

C. The facts alleged in the original petition and the supplement thereto and in the amended petition state a claim upon which the relief therein requested can be granted.

1. The Bankruptcy Court as a court of equity has the power and duty to direct the order of payment of dividends on allowed claims as between creditors of the same class where for any



reason it would be unfair, unjust, or inequitable to allow all such claimed dividends on an equal pro rata basis. See *Bank of America National Trust and Savings Association v. Erickson* (9th Cir., 1941), 117 F. (2d) 796, 45 A.B.R. (N.S.) 503.

C. The refusal to grant the Receiver leave to amend his pleadings after apparently holding that the original pleadings did not state facts sufficient to constitute a cause of action, constituted an abuse of discretion.

1. The facts set forth in the verified pleading dated March 18, 1949, entitled "Amended [197] Petition of Receiver for an Order Subordinating Claims of The Bank of America" if proved, require the Bankruptcy Court to subordinate the claims of the Bank of America as prayed for by the Receiver. The motions for leave to file such amended petitions were both timely and appropriate.

D. The objections of the Receiver to the proposed form of order, which was the order actually signed by the Referee in Bankruptcy, should have been sustained, and the signing of the order without considering the said objections of the Receiver thereto constituted an error of law and abuse of discretion.

1. The order of March 19, 1949, upon which this petition for review is based, was submitted to counsel for petitioner for approval as to form on March 18, 1949. Pursuant to Rule 7(a) of the Rules of the United States District Court for the Southern

District of California, counsel for the Receiver did not endorse thereon an approval as to form, but within one day of the receipt thereof filed with the Referee a written detailed statement of his objections thereto and the reasons therefor. The Referee had, however, already signed the order apparently prior to receipt of the Receiver's objections to the form thereof.

2. The only real argument presented to the Referee in Bankruptcy on March 2nd and March 18, 1949, centered upon the issue of retention of jurisdiction by the Bankruptcy Court and the authority of George T. Goggin as Receiver having the powers of a trustee to present the petitions for relief from which the within review is being taken; it was error on the part of the Bankruptcy Court to overrule the Receiver's objections [198] to the proposed form of order, for the reason that said order of March 19, 1949, affirmed all of the grounds set forth in the response of Bank of America dated March 2, 1949, which included therein an attack upon the sufficiency of the proposed petition and supplement thereto for order to show cause dated July 30, 1948, now in question. The said petition dated July 30, 1948, and the supplement thereto dated January 20, 1949, in themselves set forth sufficient facts to constitute a cause of action requiring the Bankruptcy Court to subordinate the payment of any dividend to the Bank of America until all other creditors of the same class have been paid in full. Not only did the aforesaid petition and the supplement thereto contain all of the facts necessary, but said facts were

more artfully pleaded in the proposed amended petition of your petitioner on review, dated March 18, 1949, and it was an abuse of discretion to deny the right of your Receiver, petitioner herein, not only to file said amended petition, but to consider the same in connection with the within proceedings. The order complained of, dated March 19, 1949, was directly contrary to the oral ruling made on March 2, 1949, in attempting to extend its effect beyond the question of jurisdiction, which was not argued on March 2, 1949.

### IX.

In connection with the within petition for review, your petitioner respectfully requests that the following documents be certified to the District Judge:

1. Proof of claim of the Bank of America, dated December 8, 1947, and denominated as follows: "In Proceedings under [199] Chapter XI, Section 322 of the Bankruptcy Act, Proof of Partially Secured Debt."

2. Motion of Bank of America to file petition for intervention and answer to objections by Receiver to claim of Northrop Aircraft, Inc., dated July 16, 1948.

3. Answer of Bank of America to the aforesaid objections to the claims of Northrop Aircraft, Inc., pursuant to the order of August 5, 1948, granting the motion of Bank of America National Trust and Savings Association for leave to file the petition for intervention and answer to objections by Receiver to claims of Northrop Aircraft, Inc.

4. The debtor's Second Amended Plan of Arrangement under Chapter XI of the Bankruptcy Act.

5. Order of the Referee in Bankruptcy dated July 30, 1948, confirming the debtor's Second Amended Plan.

6. Form of consent to said Second Amended Plan, as contained in the consent of Fairbanks-Morse & Co.

7. The petition of George T. Goggin as Receiver dated July 30, 1948, for order subordinating the claims of Bank of America.

8. Supplement to petition of George T. Goggin as Receiver for order subordinating claims of Bank of America, dated January 20, 1949.

9. Order to show cause issued by the Referee re Bank of America dated July 30, 1948.

10. Agreement of Indemnity of Northrop Aircraft, Inc., and order of court approving the same, dated November 19, 1948.

11. Document entitled, "Release and Satisfaction of Indemnity Agreement" dated December 23, 1948.

12. Document filed by Bank of America dated March 2, 1948, designated, "Response to order to Show Cause Re Petition of Receiver for Order Subordinating Claims of Bank of America [200] National Trust and Savings Association."

13. Reporter's transcript of hearing on objections to claim of Bank of America, said hearing held on March 2, 1949.

14. Notice of Motion by George T. Goggin, as Receiver, dated March 4, 1949, to reconsider ruling on motion of Bank of America, objecting to the jurisdiction of the Bankruptcy Court re subordination hearing.

15. Points and Authorities dated March 7, 1949, in support of motion of George T. Goggin as Receiver to reconsider ruling of Referee on the jurisdiction point involving the subordination of Bank of America.

16. Order of the Referee in Bankruptcy dated March 19, 1949, on petition of receiver for order subordinating claims of Bank of America and on supplemental petitions thereto.

17. Court reporter's transcript of hearing on the motion of Receiver to reconsider ruling on motion of Bank of America, objecting to the jurisdiction of the Bankruptcy Court, re subordination hearing, said hearing being held on March 18, 1949.

18. Objections of Receiver to proposed "Order on Petition of Receiver for Order Subordinating Claims of Bank of America, and on Supplement to Petition Thereto."

19. Court reporter's transcript of hearing of April 6, 1949, overruling the objections of the Receiver to the proposed order on the Bank of Amer-

ica ruling and the refusal of the Referee to consider the amended petition.

20. Original verified document dated March 18, 1949, entitled, "Amended Petition of Receiver for an Order Subordinating Claims of Bank of America."

21. Order of March 24, 1949, extending time within which to petition for review to the 14th day of April, 1949.

22. Order of the Referee in Bankruptcy dated April 7, 1949, extending the time within which to petition for review. [201]

23. The within Petition for Review.

Wherefore, your petitioner prays for a review of the order of the Referee in Bankruptcy dated March 19, 1949, by a Judge of the United States District Court and that said order be reversed and set aside, and that the Referee in Bankruptcy be directed to receive, consider and determine on its merits, after hearing evidence, the verified document dated March 18, 1949, entitled, "Amended Petition of Receiver for an Order Supporting Claim of Bank of America.

Dated: this 18th day of April, 1949.

/s/ GEORGE T. GOGGIN,  
Receiver and Petitioner.

Of counsel

/s/ MARTIN GENDEL.

For Receiver and Petitioner on Review.



State of California,  
County of Los Angeles—ss:

George T. Goggin, Receiver, being by me first duly sworn, deposes and says that he is the Petitioner in Review in the above-entitled action; that he has read the foregoing Petition for Review of Order of Referee Dated March 19, 1949, on Petition of Receiver for Order Subordinating Payment of Dividend on Claims of Bank of America, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters he believes it to be true.

/s/ GEORGE T. GOGGIN.

Subscribed and sworn to before me this 19th day of April, 1949.

[Seal]      /s/ M. ALLIS,  
Notary Public in and for said County and State of  
California.

Affidavit of service by mail attached.

Filed April 19, 1949.

HUGH L. DICKSON,  
Referee. [203]

[Title of District Court and Cause.]

IN PROCEEDINGS UNDER CHAPTER XI,  
SECTION 322, OF THE BANKRUPTCY  
ACT, PROOF OF PARTIALLY SECURED  
DEBT

At Los Angeles in the Southern District of California on September 8, 1947, came R. G. Hawley of the County of Los Angeles in said District, personally known to me and made oath and says:

That he is an officer, to wit, Assistant Cashier of Bank of America National Trust and Savings Association, a corporation, to wit, a national banking association, organized and existing under and by virtue of the laws of the United States and carrying on business in the City of Los Angeles, County of Los Angeles, and elsewhere in the State of California; that this proof of debt is made by deponent as agent of said association, duly authorized to make such proof, and that he has personal knowledge of the facts herein deposed.

That the said Salsbury Motors, Inc., a corporation, who on the 20th day of August, 1947, filed a petition under the provisions of Chapter XI, Section 322 of the Acts of Congress relating to bankruptcy, was on the date said petition was filed indebted to claimant in the principal sum of \$601,482.80, plus interest on \$159,300.00 of said amount at the rate of 4½% per annum from August 13, 1947, and is now indebted to claimant in the sum of \$509,267.18, plus interest on \$159,300.00 of said sum at 4½% per annum from August 13, 1947,

and plus interest on \$349,967.18 of said sum of 3% per annum from August 20, 1947. That said indebtedness is represented by negotiable instruments, to wit, promissory notes, and that no judgment has been rendered thereon, and that the nature and cause of said indebtedness is as follows:

Promissory notes, made, executed and delivered to claimant by debtor in the total aggregate principal amount of \$780,000.00; that copies of said promissory notes are attached hereto, marked Exhibits "A" to "F," inclusive, and made a part hereof; that the promissory note marked Exhibit "A" bears interest at the rate of  $4\frac{1}{2}\%$  per annum; that the promissory notes marked Exhibits "B" to "F," inclusive, bear interest at the rate of 3% per annum; that at the time of the execution of the note marked Exhibit "A" and as security for same the debtor, as trustor, made, executed and delivered to Corporation of America, a California corporation, as trustee for claimant, as beneficiary, a deed of trust covering certain real property situated in the County of Los Angeles, a copy of which deed of trust is attached hereto and marked Exhibit "G," which deed of trust was on the 14th day of February, 1946, recorded in Book 22818, Page 139 of Records of the County Recorder of Los Angeles County. It is expressly provided under the terms of said deed of trust that it shall be security for any and all other indebtedness and obligations of trustor to beneficiary whether present or future; that claimant is informed and believes and on such information and belief states that the value of the real

property and improvements located thereon covered by said deed of trust is in the amount of \$300,000.00. Claimant does not waive any of its right in and to said security in the event that the value of said security exceeds said sum of \$300,000.00.

That, in addition to the aforementioned security, claimant [247] had in its possession on the date of the filing of the petition herein certain notes, drafts and bills of lading of debtor covering merchandise sold by debtor, which notes, drafts and merchandise on the date of the filing of the petition herein had a face value of \$175,519.48. Claimant holds said notes, drafts and bills of lading under its right of offset, counterclaims and bank's lien.

That, since the date of the filing of the petition herein, claimant has received as collections on said drafts the sum of \$92,215.62, which sum has been applied by claimant on the principal indebtedness owing by debtor to claimant and that the face value of the drafts, notes and merchandise now held by claimant is \$83,303.86. That the total estimated value of security now held by claimant amounts to \$383,303.86 and the estimated amount of the principal of the debt owing to claimant, which is unsecured at this time, is \$125,963.32.

That there are no offsets or counterclaims to said debt and claimant does not hold and has not, nor has any person by its order or to deponent's knowledge or belief for its use, hold any security or securities for said indebtedness, except the security and offsets, counterclaims and banker's right of lien as hereinabove set forth.

That by filing this claim claimant does not waive any right to dispose of the collateral held by claimant to secure said indebtedness according to the terms of any agreement pursuant to which such security was delivered to claimant and pursuant to claimant's right of offset, counterclaim and banker's lien, and this claim is filed only as an alternative to the security held and it is this claimant's intention to dispose of this collateral and to file an amended claim for any indebtedness which may exist after the application of moneys received after the [248] disposition of said collateral.

/s/ R. G. HAWLEY.

Subscribed and sworn to before me this 8th day of September, 1947.

[Seal]      /s/ CLARA K. DEN,  
Notary Public in and for the County of Los Angeles, State of California.

### EXHIBIT "A"

Corporation Instalment Real Estate Note  
(Principal Payable in Instalments—Interest  
Separately)

Los Angeles, Calif.,  
February 13, 1946.

\$180,000.00

For value received, Salsbury Motors, Inc., a corporation promises to pay in lawful money of the United States of America, to the order of the Bank of America at its Los Angeles Main Branch in this city the principal sum of One Hundred Eighty

Thousand Dollars, with interest payable quarterly, beginning August 13, 1946, in like lawful money from date on deferred balances until paid at the rate of Four and One-Half per cent per annum; and said principal sum payable as follows: Three Thousand Six Hundred Dollars, (\$3,600.00), on the 13th day of August, 1946, and Three Thousand Six Hundred Dollars (\$3,600.00) on the 13th day of November, 1946, and Four Thousand Five Hundred Dollars (\$4,500.00) on the 13th day of February, 1947, and Four Thousand Five Hundred Dollars, (\$4,500.00), on the 13th day of each and every third month thereafter until the 13th day of February, 1956, on which said date the entire balance of principal and interest then unpaid shall become due and payable.

If the interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal. If default be made in the payment when due of any part or instalment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

A deed of trust dated February 13, 1946, secures the indebtedness evidenced by this note.

In Witness Whereof, the said Corporation has caused this note to be executed by its officers thereunto duly authorized and directed by a resolution of its Board of Directors duly passed and adopted



by a majority of said Board at a meeting thereof duly called, noticed, and held.

[Seal] SALSBUURY MOTORS, INC.,  
a Corporation,

By /s/ DON I. CARROLL,  
President,

By /s/ M. W. LOWERY,  
Secretary. [250]

Salsbury Motors, Inc.			RE-8159	
Date	Interest Paid Amount	Paid to	Paid on Account of Amount	Principal Balance
9-13-46	-----	-----	3,600.00	180,000.00
10-15-46	385.65	10- 1-46		176,400.00
11-13-46	786.90	11-13-46	3,600.00	172,800.00
12-19-46	535.50	12-13-46		
1-20-47	535.50	1-13-47		
2-28-47	603.00	2-13-47	4,500.00	168,300.00
5-14-47	1,901.80	5-13-47	4,500.00	163,800.00
8-15-47	1,842.75	8-13-47	4,500.00	159,300.00

## EXHIBIT "B"

Salsbury Motors

UT 175930

## PROMISSORY NOTE

Los Angeles, California,  
February 13, 1947.

\$100,000.00.

For Value Received, the undersigned, Salsbury Motors, Inc., a corporation, promises to pay in lawful money of the United States of America to the order of Bank of America National Trust and Savings Association at its Main Branch in this city the

principal sum of one hundred thousand dollars (\$100,000.00), with interest payable at maturity in like lawful money from the date hereon until paid at the rate of three per cent (3%) per annum, and said principal sum payable on May 14, 1947.

If interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal.

This note evidences a loan made pursuant to a Loan Agreement between the payee and the undersigned dated February 18, 1946, and subsequent amendments thereto.

[Seal]                    SALSBUURY MOTORS, INC.,

By /s/ GAGE H. IRVING,

Vice President and

General Manager,

By /s/ G. R. CASE,

Secretary and Treasurer.

### EXHIBIT C

UT 169355.

Salsbury Motors, Inc.

Los Angeles, California,

June 27, 1946.

\$100,000.00.

For Value Received, the undersigned, Salsbury Motors, Inc., a corporation, promises to pay in lawful money of the United States, to the order of Bank of America National Trust and Savings Association at its Main Branch in this city the principal sum of \$100,000.00 (one hundred thousand

dollars) with interest payable quarterly in like lawful money from the date hereof on deferred balances until paid at the rate of three per cent (3%) per annum, said principal sum payable as follows:

\$20,000.00 on or before September 30, 1947,

\$30,000.00 on or before September 30, 1948,

\$30,000.00 on or before September 30, 1949, and

\$20,000.00 on or before September 30, 1950,

On which date the entire balance of principal and interest then unpaid shall become due and payable.

If interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal. If default be made in the payment when due of any part or installment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

This note evidences a loan made pursuant to a loan agreement between the payee and the undersigned dated February 18, 1946.

[Seal]                      SALSBUURY MOTORS, INC.,

By /s/ DON I. CARROLL,  
President,

By /s/ M. W. LOWERY,  
Secretary. [253]

## EXHIBIT D

UT 170049.

Salsbury Motors, Inc.

Los Angeles, California,

July 16, 1946.

\$100,000.00.

For Value Received, the undersigned, Salsbury Motors, Inc., a corporation, promises to pay in lawful money of the United States, to the order of Bank of America National Trust and Savings Association at its Main Branch in this city the principal sum of \$100,000.00 (one hundred thousand dollars) with interest payable quarterly in like lawful money from the date hereof on deferred balances until paid at the rate of three per cent (3%) per annum, said principal sum payable as follows:

\$20,000.00 on or before September 30, 1947,

\$30,000.00 on or before September 30, 1948,

\$30,000.00 on or before September 30, 1949, and

\$20,000.00 on or before September 30, 1950,

On which date the entire balance of principal and interest then unpaid shall become due and payable.

If interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal. If default be made in the payment when due of any part or installment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

This note evidences a loan made pursuant to a loan agreement between the payee and the undersigned dated Feb. 18, 1946.

[Seal] SALSBUry MOTORS, INC.,

By /s/ DON I. CARROLL,  
President,

By /s/ M. W. LOWERY,  
Secretary. [254]

EXHIBIT E

UT 170518.

Los Angeles, California,  
August 1, 1946.

\$100,000.00.

For Value Received, the undersigned, Salsbury Motors, Inc., a corporation, promises to pay in lawful money of the United States, to the order of Bank of America National Trust and Savings Association at its Main Branch in this city the principal sum of \$100,000.00 (one hundred thousand dollars) with interest payable quarterly in like lawful money from the date hereof on deferred balances until paid at the rate of three per cent (3%) per annum, said principal sum payable as follows:

\$20,000.00 on or before September 30, 1947,  
\$30,000.00 on or before September 30, 1948,  
\$30,000.00 on or before September 30, 1949, and  
\$20,000.00 on or before September 30, 1950,

On which date the entire balance of principal and interest then unpaid shall become due and payable.

If interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal. If default be made in the payment when due of any part or installment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

This note evidences a loan made pursuant to a loan agreement between the payee and the undersigned dated February 18, 1946.

[Seal]                      SALSBUURY MOTORS, INC.,

By /s/ DON I. CARROLL,  
President,

By /s/ M. W. LOWERY,  
Secretary. [255]

### EXHIBIT F

UT 170818.

Los Angeles, California,  
August 15, 1946.

\$200,000.00.

For Value Received, the undersigned, Salsbury Motors, Inc., a corporation, promises to pay in lawful money of the United States, to the order of Bank of America National Trust and Savings Association at its Main Branch in this city the principal sum of \$200,000.00 (two hundred thousand dollars) with interest payable quarterly in like lawful money from the date hereof on deferred balances until paid at the rate of three per cent (3%) per annum, said principal sum payable as follows:



\$40,000.00 on or before September 30, 1947,  
\$60,000.00 on or before September 30, 1948,  
\$60,000.00 on or before September 30, 1949, and  
\$40,000.00 on or before September 30, 1950,

On which date the entire balance of principal and interest then unpaid shall become due and payable.

If interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal. If default be made in the payment when due of any part or installment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

This note evidences a loan made pursuant to a loan agreement between the payee and the undersigned dated February 18, 1946.

[Seal] SALSBUURY MOTORS, INC.,

By /s/ DON I. CARROLL,

President.

By /s/ M. W. LOWERY,

Secretary. [256]

## EXHIBIT G

This Deed of Trust, made this 13th day of February, 1946, between Salsbury Motors, Inc., a corporation, as Trustor, ("Trustor" to be interpreted as "Trustors" where context requires), Corporation of America, a California corporation, as Trustee, and Bank of America National Trust and Savings Association, a national banking association, as Beneficiary,

Witnesseth: That Trustor Irrevocably Grants, Transfers and Assigns to Trustee, in Trust, With Power of Sale, the following described property situate in the County of Los Angeles, State of California, to wit:

The Southwest quarter of Block 208 of Pomona Tract, in the City of Pomona, as per map recorded in Book 3, Page 95 of Miscellaneous Records, in the office of the County Recorder of said County; areas computed to centers of adjoining streets.

Except therefrom such portion as may have been heretofore conveyed to the Southern Pacific Railroad Company, including all appurtenances and easements used in connection therewith, all water and water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant) used in connection therewith, all shares of stock evidencing the same, pumping stations, engines, machinery, pipes and ditches, including also all gas, electric, cooking, heating, cooling, air conditioning, refrigeration and plumbing fixtures and equipment which have been or may hereafter be attached in any manner to any building now or hereafter on the said property, or to the said property, and also the rents, issues and profits thereof, Subject, However, to the right, power and authority hereinafter given to and conferred upon the Beneficiary to collect and apply such rents, issues and profits.

For the Purpose of Securing: (1) Payment of the sum of \$180,000.00 with interest thereon according to the terms of a promissory note or notes of even date herewith, made by Trustor, payable to the

order of the Beneficiary, and extensions or renewals thereof; (2) payment of such additional amounts as may be hereafter loaned by Beneficiary or its successor to the Trustor or any of them, or any successor in interest of the Trustor, with interest thereon, and any other indebtedness or obligation of the Trustor, or any of them, and any present or future demands of any kind or nature which the Beneficiary or its successor may have against the Trustor, or any of them, whether created directly, or acquired by assignment, whether absolute or contingent, whether due or not, whether otherwise secured or not, or whether existing at the time of the execution of this instrument, or arising thereafter; (3) performance of each agreement of Trustor herein contained; and (4) payment of all sums to be made by Trustor pursuant to the terms hereof.

To Protect the Property and Security Granted by This Deed of Trust, Trustor Agrees:

(a) Properly to care for and keep said property and the buildings and improvements situate thereon in good condition and repair; to underpin and support, when necessary, any building or other improvement situate thereon, and otherwise to protect and preserve same; not to remove or demolish any building or improvement situate thereon; to complete or restore promptly, and in good and workmanlike manner, any building or improvement which may be constructed, damaged or destroyed thereon, and pay in full all costs incurred therefor;

not to commit or permit waste of the property; to comply with all laws, covenants, conditions or restrictions affecting the property; to provide and maintain fire (and if required by Beneficiary, earthquake and other) insurance satisfactory to and with loss payable solely to Beneficiary, and to deliver all policies to Beneficiary, which delivery shall constitute assignment to Beneficiary of all return premiums; to appear in and defend, without cost to Beneficiary or Trustee, any action or proceeding purporting to affect the security hereunder, or the rights or powers of Beneficiary or Trustee, and, when required by Trustee [257] or Beneficiary, to commence and maintain any action or proceeding necessary to protect such security and such rights or powers; and should Trustee or Beneficiary elect to appear in, defend, or commence and maintain any such action or proceeding, to pay all their costs and expenses, including attorney fees; to pay before delinquency, all taxes, assessments and charges affecting the property, including assessments on appurtenant water stock; to pay when due all encumbrances, charges and liens which appear to be prior or superior hereto; to pay all costs, fees and expenses of this trust; if said property be agricultural, to farm said land in an approved and husbandmanlike manner, and to keep all trees, vines and crops on said land properly cultivated, irrigated, fertilized, sprayed and fumigated; to replace all dead or unproductive vines or trees with new ones, and to keep all buildings, fences, ditches, canals, wells and other farming improvements on

said premises in first-class condition, order and repair.

(b) Should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or Trustee (but without obligation so to do, and without notice to or demand upon Trustor, and without releasing Trustor from any obligation hereunder) may make or do the same, and may pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by Beneficiary or Trustee shall be without demand immediately due and payable by Trustor, and shall bear interest at the rate of ten per cent per annum, and be secured hereby.

It Is Mutually Agreed That:

1. Should the property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire or earthquake, or in any other manner, Beneficiary shall be entitled, at its option, to commence, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with such taking or damage, and to obtain all compensation, awards or other relief therefor. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of insurance affecting



said property, are hereby assigned to Beneficiary, who may release any money so received by it, or apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages and rights of action and proceeds, as Beneficiary or Trustee may require. The Trustee or Beneficiary may enter upon the property at any time during the existence of this trust for the purpose of inspection, or for the accomplishment of any of the purposes hereof.

2. By accepting payment of any sum hereby secured after its due date, or after the filing of notice of default and of election to sell, Beneficiary shall not waive its right to require prompt payment when due of all other sums so secured, or to declare default for failure so to pay, or to proceed with the sale under any such notice of default and of election to sell, for any unpaid balance of said indebtedness. If Beneficiary holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Trustor, Beneficiary may, at its option, offset against any indebtedness owing by it to Trustor, the whole or any part of the indebtedness secured hereby.

3. Without affecting the liability of any person, including Trustor, for the payment of any indebtedness secured hereby, or the lien of this deed of trust on the remainder of the property for the full amount of any indebtedness unpaid, Beneficiary



and Trustee are respectively empowered as follows: Beneficiary may from time to time and without notice (a) release any person liable for the payment of any of the indebtedness, (b) extend the time or otherwise alter the terms of payment of any of the indebtedness, (c) accept additional security therefor of any kind, including deeds of trust or mortgages, (d) alter, substitute or release any property securing the indebtedness; Trustee may, at any time, and from time to time, upon the written request of Beneficiary (a) consent to the making of any map or plat of the property, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this deed of trust or the lien or charge thereof, (d) reconvey, without any warranty, all or any part of the property.

4. Upon payment in full of all sums secured hereby, and performance of all obligations of the Trustor hereunder, the Trustee shall reconvey, without warranty, the estate vested in it hereby. The grantee in any reconveyance made pursuant to this deed of trust may be described as "the person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Upon default by Trustor in the payment of any indebtedness secured hereby, or in the performance of any agreement hereunder, or upon conveyance by Trustor of said property, or upon the divestment in any manner of his title thereto, all sums secured hereby

shall immediately become due and payable at the option of the Beneficiary. In the event of default, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause to be sold the property herein described, to satisfy the obligations secured hereby, and shall cause such notice to be recorded in the office of the Recorder of each county wherein said property, or some part thereof, is situated. Beneficiary may rescind any such notice before Trustee's sale by executing a notice of rescission and recording the same. The recordation of such notice shall constitute also a cancellation of any prior declaration of default and demand for sale, and of any acceleration of maturity of indebtedness affected by any prior declaration or notice of default. The exercise by Beneficiary of the right of rescission shall not constitute a waiver of any default then existing or subsequently occurring, nor impair the right of the Beneficiary to execute other declarations of default and demand for sale, or notices of default and of election to cause the property to be sold, nor otherwise affect the note or deed of trust, or any of the rights, obligations or remedies of the Beneficiary or Trustee hereunder.

5. At least three months having elapsed between the recordation of the notice of default and the date of sale, Trustee, having first given notice of sale as then required by law, and without demand on Trustor, shall sell the property at the time and place of sale fixed by it in the notice of sale, either as a

whole or in separate parcels, and in such order as the Trustee may determine, at public auction to the highest bidder for cash, in lawful money of the United States of America, payable at the time of sale. Trustee may postpone sale of all or any portion of the property by public announcement at the time of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the previous postponement, and without further notice it may make such sale at the time to which the same shall be so postponed. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, expressed or implied. The recital in any such deed of any matters or facts, stated either specifically or in general terms, or as conclusions of law or fact, shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. After deducting all costs, fees and expenses of Trustee and of this trust, including costs of evidence of title in connection with the sale, the Trustee shall apply the proceeds of the sale to the payment of all sums then secured hereby, in such order and manner as may be required by the Beneficiary; the remainder, if any, to be paid to the person or persons legally entitled thereto. If Beneficiary shall elect to bring suit to foreclose this deed of trust in the manner and subject to the provisions, rights and remedies relating to the foreclosure of a mortgage, Beneficiary shall be entitled to a reasonable

sum to be fixed by the court as attorney fees expended in the prosecution of said action.

6. As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these trusts, to collect the rents, issues and profits of said property, or of any personal property [258] located thereon, with or without taking possession of the property affected hereby, reserving unto the Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby, or in the performance of any agreement hereunder, to collect and retain such rents, issues and profits as they accrue and become payable. Upon any such default Beneficiary may at any time, without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine; also perform such acts of repair, cultivation, irrigation or protection, as may be necessary or proper to conserve the value of the property; also lease the same or any part thereof for such rental, term, and upon such conditions as its judgment may dictate; also prepare for

harvest, harvest, remove, and sell any crops that may be growing upon the premises, and apply the proceeds thereof upon the indebtedness secured hereby. The entering upon and taking possession of said property, the collection of such rents, issues and profits, and the application thereof as aforesaid, shall not waive or cure any default or notice of default hereunder, or invalidate any act done pursuant to such notice. Trustor also assigns to Trustee, as further security for the performance of the obligations secured hereby, all prepaid rents and all moneys which may have been or may hereafter be deposited with said Trustor by any lessee of the premises herein described, to secure the payment of any rent, and upon default in the performance of any of the provisions hereof, Trustor agrees to deliver such rents and deposits to the Trustee.

7. Any Trustor who is a married woman hereby expressly agrees that recourse may be had against her separate property for any deficiency after the sale of the property hereunder.

8. Should proceedings be instituted to register title of the property under any land title law, Trustor will pay upon demand all sums expended by Trustee or Beneficiary, including attorney fees, and forthwith deliver to Beneficiary all evidence of title.

9. The pleading of any statute of limitations as a defense to any and all obligations secured by this deed of trust is hereby waived to the full extent permissible by law.



10. Trustor further agrees that Beneficiary may from time to time and for periods not exceeding one year, in behalf of the Trustor, renew or extend any promissory note secured hereby, and said renewal or extension shall be conclusively deemed to have been made when endorsed on said promissory note or notes by the Beneficiary in behalf of the Trustor.

11. Beneficiary may, from time to time, substitute another Trustee in the place of the Trustee herein named. Each such appointment and substitution, and without conveyance to the successor trustee, the latter shall be vested with all the title, powers and duties conferred upon the Trustee herein named. Each such appointment and substitution shall be made by written instrument executed by the Beneficiary, containing reference to this deed of trust sufficient to identify it, which, when recorded in the office of the County Recorder of the county or counties in which the property is situated, shall be conclusive proof of the proper appointment of the successor trustee.

12. This deed of trust shall inure to and bind the heirs, devisees, legal representatives, successors and assigns of the parties hereto. All obligations of each Trustor hereunder are joint and several. The rights or remedies granted hereunder, or by law, shall not be exclusive, but shall be concurrent and cumulative.

If a mailing address is set forth opposite any



Trustor's signature hereto, and not otherwise, the undersigned Trustor shall be deemed to have requested that a copy of any notice of default, and of any notice of sale hereunder, be mailed to said Trustor at said address.

Signature of Trustor.

[Seal]                   SALSBURY MOTORS, INC.,  
a Corporation.

By /s/ DON I. CARROLL,  
President,

By /s/ M. W. LOWERY,  
Secretary.

State of California,  
County of Los Angeles—ss:

On this 13th day of February, 1946, before me Gladys A. Hultman, a Notary Public in and for said Los Angeles County, personally appeared Don I. Carroll known to me to be the President and M. W. Lowery, known to me to be the Secretary of the Salsbury Motors, Inc., the Corporation that executed the within instrument, and also known to me to be the person who executed the within instrument, on behalf of the Corporation herein named, and acknowledged to me that such Corporation executed the same.

Witness my hand and official seal.

[Seal]       /s/ GLADYS A. HULTMAN,  
Notary Public in and for said Los Angeles County  
and State.

[Endorsed]: Filed June 20, 1949, U.S.D.C. [259]

[Title of District Court and Cause.]

OBJECTIONS OF PETITIONER ON REVIEW  
TO PROPOSED "ORDER" DENYING PE-  
TITION FOR REVIEW IN RE PETITION  
FOR ORDER SUBORDINATING CLAIMS  
OF BANK OF AMERICA"

Comes Now George T. Goggin, Receiver and Petitioner on Review and pursuant to Rule 7(a) of the Rules of the United States District Court for the Southern District of California, makes these objections to the proposed "Order Denying Petition for Review in Re Petition for Order Subordinating Claims of Bank of America." A copy of said proposed Order was served upon counsel for the Receiver on December 27, 1949, at 1:30 p.m., and at which time pursuant to Rule 7(a), counsel for the Receiver acknowledged receipt of a copy thereof on the original proposed Order.

The Receiver objects to the proposed Order on the ground that it fails to mention or dispose of the issues raised by this Review with respect to the "Amended Petition of Recevier for an Order Subordinating Claims of Bank of America" filed with the Referee on April 6, 1949, and transmitted to this Court as [325] Document No. 20 with the Referee's Certificate on Review. In the Petition for Review filed on or about April 19, 1949, one of the alleged errors complained of by the Petitioner was "the refusal to grant the Receiver leave to amend his pleadings after apparently holding that the original pleadings did not state facts sufficient to

constitute a cause of action'' (Line 28 of Page 9 and Line 18 of Page 11 of Petition for Review and Order of Referee dated March 19, 1949).

The issues with respect to the Amended Petition were extensively referred to in the briefs filed by both parties to this Review (Pages 13 to 16 and Pages 33 to 37 of Receiver's Points and Authorities and Pages 4 to 6 of the Bank's Points and Authorities).

Notwithstanding the proper presentation of the legal questions pertaining to the Amended Petition presented to the Court by this Review, the proposed Order submitted by the prevailing party makes no mention whatsoever of the Amended Petition. In the portion of the Bank's Points and Authorities above mentioned referring to the Amended Petition, it is argued that the Amended Petition was not properly before the Court. The contrary was contended by the Receiver. It is respectfully submitted that the Receiver is entitled to a ruling with respect to the Amended Petition on Review. The proposed Order does not indicate whether or not this Court has adopted the Bank's contention that the Amended Petition was not properly before the Court or whether this court considered the Amended Petition and affirmed the Referee on the basis of the original Petition, the Supplement thereto, as well as the Amended Petition. The failure of the proposed Order to make any reference to the Amended Petition is particularly significant by reason of the fact that all of the other pleadings are specifically mentioned in the proposed Order (Lines 18 to 23

of [326] Page 1 and Lines 6 to 9 of Page 2). By reason of the fact that an appeal to the Court of Appeals for the Ninth Circuit is contemplated to review the Order to be entered by this Court we strenuously urge that the Receiver is entitled to a ruling with respect to the Amended Petition so that the Court of Appeals will have the complete ruling of this Court before it.

Dated: this 30th day of December, 1949.

Respectfully submitted,

GENDEL & RASKOFF

By /s/ H. MILES RASKOFF,

Attorneys for Receiver.

Affidavit of service by mail attached.

[Endorsed]: Filed Dec. 30, 1949, U.S.D.C.

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In the United States District Court for the Southern District of California, Central Division  
No. 45,207-B

In the Matter of:

SALSBURY MOTORS, INC., a Corporation,  
Debtor.

ORDER DENYING PETITION FOR REVIEW  
IN RE PETITION FOR ORDER SUB-  
ORDINATING CLAIMS OF BANK OF  
AMERICA

The above matter came on for hearing on December 12, 1949, upon the petition of the Receiver,

George T. Goggin, to review an order of the Honorable Referee Hugh L. Dickson entered March 19, 1949. The order of the Referee was made upon the petition of the Receiver for an order subordinating claims of Bank of America, a supplement to the petition of the Receiver for an order subordinating claims of Bank of America, and an order to show cause issued thereon, and the response of the Bank of America to the order to show cause, petition, and supplemental petition. The Receiver was represented by his attorneys, Gendel & Raskoff, appearing by H. Miles Raskoff, and the respondent Bank of America National Trust and Savings Association being represented by its attorneys, Hugo A. Steinmeyer and Robert H. Fabian, appearing by Robert H. Fabian, and the matter having been argued by the respective counsel and points and authorities filed by both parties, and the matter submitted to the Court for its decision; and

It appearing to the Court that the objections set forth [329] in the aforesaid response of Bank of America National Trust and Savings Association are well founded; and

It appearing that the Court has no jurisdiction over the controversies and issues raised by the said petition, supplement thereto, and response thereto; and

It further appearing to the Court that the said Receiver is without power or authority to prosecute the proceedings initiated by the said petition and supplement thereto and order to show cause issued



thereon; and the Court having fully considered the arguments of counsel, points and authorities, and the aforesaid order of the Referee, and the undersigned United States District Judge being in agreement with said Referee as to said order;

It Is Ordered That the petition of the Receiver and supplemental petition thereto be denied, and the order to show cause thereon be dismissed, and

It Is Further Ordered That the petition of the Receiver for review of the order of the Referee, dated March 19, 1949, be denied and that the order of the Referee be affirmed.

Dated this 6th day of January, 1950.

/s/ HARRY C. WESTOVER,  
United States District Judge.

Judgment entered Jan. 20, 1950.

Docketed Jan. 20, 1950.

Receipt of copy acknowledged.

[Endorsed]: Filed January 6, 1950, U.S.D.C.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court:

Notice Is Hereby Given that George T. Goggin, as Receiver of the above-named debtor, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order Denying Petition



for Review in Re Petition for Order Subordinating Claims of Bank of America entered by this court on January 6, 1950, in Judgment Book 63, at page 261, and from the whole thereof.

Dated: January 20, 1950.

/s/ MARTIN GENDEL,  
Of Counsel, for George T. Goggin, Receiver and  
Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed February 3, 1950, U.S.D.C.

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[Title of District Court and Cause.]

APPELLANT'S DESIGNATION  
OF RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

George T. Goggin, Receiver of the above-named debtor, through his counsel, hereby designates the entire record before the District Court, including all the papers, pleadings and evidence certified to the District Court by the Honorable Hugh L. Dickson, Referee in Bankruptcy, with his certificate on review from his Order on Petition of Receiver for Order Subordinating Claims of the Bank of America and on Supplemental petition thereto dated March 19, 1949, and all papers, pleadings and evidence filed with or received by the District Court in connection with said review.

Pursuant to the provisions of Rule 75(o) of the Rules of Civil Procedure for the United States District Courts, as amended, and pursuant to Rule 11 of the Rules of the United States Court of Appeals for the Ninth Circuit, as amended, request is hereby made that the clerk of the above-entitled court transmit all the original papers in the file dealing with the action or the proceeding in which the appeal has been taken, including the Notice of Appeal and this designation.

Dated at Los Angeles, California, this 20th day of January, 1950.

/s/ MARTIN GENDEL,  
Of Counsel, for George T. Goggin, Receiver and  
Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed February 3, 1950.

In the District Court of the United States South-  
ern District of California, Central Division

No. 45,207-B

In the Matter of:  
SALSBURY MOTORS, INC.,

Debtor.

HEARING RE MOTION OF RECEIVER TO  
RECONSIDER RULING ON MOTION OF  
BANK OF AMERICA OBJECTING TO  
THE JURISDICTION OF THE BANK-  
RUPTCY COURT RE SUBORDINATION  
HEARING

\* \* \*

The Referee: I am not at all satisfied that my original order was in error. Therefore, this petition for rehearing will be denied.

(A short interruption.)

Mr. Gendel: I am sorry to bother the Court again and I appreciate your indulgence.

The Referee: What do you want? Let's get to the point.

Mr. Gendel: As I indicated in my argument, we prepared a proposed amended petition of the Receiver and I thought it might be fair if the Receiver was permitted to file the amended petition now and then have a review on the jurisdiction go up on the amended petition because we feel we have more completely set forth the facts.

The Referee: I passed on something that was before me when I made my ruling. Now, you want me to make the same ruling on the contents of a document about which I know nothing.

Mr. Gendel: We couldn't file it without the Court's permission. We would like permission to file it.

The Referee: If counsel has no objection, then I have none.

Mr. Steinmeyer: I have an objection, Your Honor. I think it should be noticed.

The Referee: I do, too.

Mr. Gendel: Your Honor is not ruling on the merits of the petition, but it would give the higher court the information we are arguing about. This amendment clearly sets forth the picture.

The Referee: I think it would be unfair to me and everybody else to pass on a document about which I know nothing.

Mr. Steinmeyer: That is right. I haven't seen it, either.

Mr. Gendel: Your Honor is ruling on the jurisdiction and we have enlarged on the specific facts which we think would sustain the subordination.

The Referee: I won't agree to your filing it unless counsel does.

Mr. Steinmeyer: I object because no notice has been given.

Mr. Gendel: May we have leave to serve and file the amended petition now and Your Honor can take the matter under submission?

The Referee: No. I have had things under sub-

mission all I want. You should have filed it a couple or three days before.

Mr. Gendel: We felt we couldn't file it without the permission of the Court with the other matter pending.

The Referee: That is true.

Mr. Gendel: We had no basis on which to file the amended petition unless Your Honor would hear it on the merits.

The Referee: I will deny your right to file the amended petition at this time.

\* \* \*

[Endorsed]: Filed May 24, 1949, U.S.D.C.

Filed March 30, 1949.

HUGH L. DICKSON,  
Referee.

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[Title of District Court and Cause.]

HEARING IN RE OBJECTIONS TO  
CLAIM OF BANK OF AMERICA

\* \* \*

At this time we are not objecting to the allowance of any claims of the Bank of America. If that is not clear from our pleadings, it is only because they have not read those pleadings. What we are seeking to do by our subordination proceedings is to obtain from this Court an order subordinating any claims of the Bank of America as ulti-

mately allowed. It is true the Bankruptcy Act under its express provision gives the Court the right to re-inquire into any orders made on allowances of claims or objections thereto. We could proceed under that authority, but we are not. We are proceeding on the basis that whether the claims of the Bank of America amount to \$198,818.44, as it will amount to in the gross if the banker's lien litigation is affirmed, or if reversed it will be in some greater amount, but whatever amount is allowed ultimately that the payment of dividends on that allowed claim are subordinated.

\* \* \*

The Referee: I understand that, but I am sustaining the motion to it on the ground I have no power to pass on a controversy between creditors. The plan says "All controversies with creditors." If the bank comes in here I have a right to pass on its claims, but as between creditors I don't think I have any right to do it.

Mr. Gendel: Would it be of any assistance for the record if we were to make an offer of proof or would the ruling of this Court at this time be limited purely to the jurisdictional problem involved in the objection of [63] the bank to the jurisdiction of the Court? I am concerned with whether or not Your Honor feels that the petitions themselves state facts sufficient to constitute a cause of action.

The Referee: I don't think so. I don't think they do, Mr. Gendel. I think they are lamentably lacking in specific allegations.



Mr. Gendel: At this time, Your Honor, in order to keep the record clear, if the Court is of the opinion that the petitions are at all lacking in specific allegations, we ask leave on behalf of the Reciever to amend the petition and the supplement with reference to the subordination of the Bank of America. This motion was presented only this morning.

The Referee: I don't know why you should not have leave to do that. How long do you want?

Mr. Steinmeyer: May I be heard on that point?

The Referee: Yes, sir. Don't you want to give them a chance? Give every man his chance, Mr. Steinmeyer.

Mr. Steinmeyer: I think that is right, Your Honor. I think the petition now, however, goes so much further than the evidence will show.

The Referee: I don't know about that, of course. My only idea was to give them an opportunity to get their petition in a form that would allege something. For instance, I remember one quotation where you said they "intimated" something.

Mr. Steinmeyer: I realize that, Your Honor, but if there is no jurisdiction for the court to hear it, then I see no purpose in it.

The Referee: I am inclined to think there is no jurisdiction here.

Mr. Steinmeyer: I am satisfied that is the case, Your Honor.

Mr. Gendel: My position is two-fold: If the Court is going to reserve its ruling purely on the point of jurisdiction, when we seek a review we

would limit our point to that, but if the Court would extend its ruling and find the facts alleged in the petition, pursuant to the motion made this morning, are not sufficient to constitute a cause of action then we would be in an embarrassing position. We would like leave to amend.

The Referee: I will limit my ruling then solely to the lack of jurisdiction.

Mr. Steinmeyer: There is one other point I would like to mention, the point I made this morning, that the Trustee has no power from the nature of his office to commence a proceeding of this kind.

The Referee: If that be so, then if he has no power to file it I would have no power to hear it. Isn't that right?

Mr. Steinmeyer: That is right. Shall I prepare the order on that?

The Referee: I would.

Mr. Gendel: I would appreciate that, Mr. Steinmeyer.

[Endorsed]: Filed March 24, 1949, U.S.D.C.

Filed: March 12, 1949.

HUGH L. DICKSON,  
Referee.

[Title of District Court and Cause.]

HEARING RE OBJECTIONS TO PROPOSED  
ORDER ON PETITION OF RECEIVER  
FOR ORDER SUBORDINATING CLAIMS  
OF BANK OF AMERICA AND ON SUP-  
PLEMENT TO PETITION THERETO.

The following is a stenographic transcript of the proceedings had in the above entitled cause, which came on for hearing before the Honorable Hugh L. Dickson, Referee in Bankruptcy, at his courtroom, 343 Federal Building, Los Angeles, California, at 10:00 a.m., on Wednesday, April 6, 1949.

Appearances:

MARTIN GENDEL, ESQ.

Appearing on behalf of the Receiver.

ROBERT FABIAN, ESQ.,

Appearing on behalf of the Bank of  
America.

The Referee: What have we this morning in Salsbury Motors, Inc.?

Mr. Gendel: If the Court please, as indicated by the documents filed on or about March 19, our matter this morning is limited to the question of the contents of the order on the petition of the Receiver for the order subordinating the claims of the Bank of America. Your Honor will recall that we had the oral arguments on it, I think first about March 2, and the reconsideration on March 18.

On that date there was submitted a form of order to be signed by Your Honor sustaining the objection to the jurisdiction. Our only problem this morning on behalf of the Receiver is, as we have pointed out in our objection—does Your Honor have the written objections?

(A short interruption while file is being searched.)

Mr. Gendel: There isn't anything I can add to what we have stated there. The response of the Bank of America contained objections generally to the allegations of fact, the petition for subordination, and the supplement thereto. Your Honor will remember we had a colloquy at the time the Court sustained the objections to jurisdiction and the Court indicated then the objection was sustained solely on the lack of jurisdiction. However, when the order was presented to Your Honor, it included all of the objections that the bank had urged.

The Referee: I have already signed the order.

Mr. Gendel: Our problem there is this. The order submitted to the Court was submitted on the 18th and signed by the Court, according to the records, on the 19th. Our objections in the form in which we have presented which are now before the Court apparently did not come to the Court's attention until the 21st. All we are trying to do now is present the form of the objections so that if Your Honor should see fit to agree with us on the order as we understand it, then I believe the Court could cure the problem by signing an amended order. I

suppose that would be the form. The only evil we are afraid of is this, Your Honor. The Court did make some comment during the time we were considering the petition and the supplement thereto on the reaction of the Court that the facts there were not stated too artfully and the language was perhaps too general and Your Honor felt that the allegations should be more specific. Now, if the Court's reaction along that line is right, we feel it is not a thing we want to stand on in adamant fashion and say those allegations are good and do not have to be changed. On the contrary, we have submitted to the Court a suggested amended petition which we think sets forth the basic allegations that the Receiver can prove, and if Your Honor is desirous of enlarging on the basis for your order on the objection to the jurisdiction of the Court, why, then the only relief we would like to have is the granting of permission to file that proposed amended petition.

We served a copy of that as well as attaching it to the objections so that there would not be any question as to allowing something to be filed which no one was familiar with. That has been served since about the 19th of March.

I respectfully urge that the order should be limited to the order made orally by this Court which was specifically only on the lack of jurisdiction. We do not think that the proper order as submitted by the bank should have been signed, but we did not have a chance to argue that to Your Honor because they brought it in the same day Your

Honor denied the motion to reconsider and we did not have five days under Rule 7a to consider that. We have submitted a form of order which we think is exactly in accordance with the colloquy between Your Honor and counsel.

The Referee: I don't think I should be bound by that one statement alone. In other words, I think I have a right to look at the whole picture regardless of what I may have said.

Mr. Gendel: We would not dispute that right because I believe it is common knowledge, or at least it is set forth in cases, that until the Judge signs his order it is not an order.

The Referee: That is correct.

Mr. Gendel: We do not dispute that right at all, but we say if you do want to enlarge on your order, then as a matter of equity, to give the Receiver his day in court, that you should permit us to file the amended petition so that the Appellate Court will be in a position to see our allegations as we think they should have been submitted in the first instance. The fear we have is that in the order which Your Honor signed there is the inclusion of the fact that the petition does not state facts sufficient to constitute a cause of action. We feel Your Honor's comments were well taken and we wanted then, if Your Honor was going to pass on the merits of the petition itself as to the allegations of fact, the opportunity to file an amended petition. That is all we are asking here. If Your Honor desires to enlarge on the order in accordance with the order of March 19, then we feel we ought to be allowed to file the



amended petition because Your Honor said something about every man having his day in court. We think the filing of the amended petition comes closer to handling our legal problems. We are not setting forth anything new. We are wording it more particularly so that if this Court or a higher court is ever required to pass on the merits as alleged, the whole picture will be there. That is all the relief we are asking for, either that it be limited to jurisdiction only or if not that we be allowed to file our amended petition.

The Referee: No. I will overrule that. I think I was right then. You may take it up on review.

Mr. Gendel: We ask for the right to file our amended petition.

The Referee: You can file anything you want. You can certify to a copy of the morning Times showing the election returns and we will take it, but I am not granting you permission to file it with the thought that I will pay any attention to it.

Mr. Gendel: That is our problem.

The Referee: Anybody can walk in here and file almost anything and they do many times. These objections will be overruled. You may file whatever you see fit.

Mr. Gendel: May we have leave then to file the original as part of our proposed objections? Is that agreeable to the Court?

The Referee: You can file any document you want, but it must be understood it was filed after I made my ruling.

Mr. Gendel: I think the objections reflect the fact we have not yet been given permission to file it.

The Referee: You may file it.

Mr. Gendel: Thank you, sir.

The Referee: And the original order will stand.

Filed: April 12, 1949.

HUGH L. DICKSON,  
Referee.

[Endorsed]: Filed May 24, 1949, U.S.D.C.

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[Title of District Court and Cause.]

#### FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ALLOWING CLAIM

The Receiver herein, George T. Goggin, heretofore filed in the above-entitled proceeding a "Petition for Order to Show Cause Against Bank of America Re: Jacques Power Saw Co." which Petition came on for hearing upon Order to Show Cause directed to Bank of America National Trust and Savings Association on December 2, 1947, at which time said Bank filed written objections to the jurisdiction of the Referee to make an order upon said Petition; and

Thereafter George T. Goggin, Receiver herein, filed "Objections to Claim of the Bank of America National Trust & Savings Association, and Prayer for Affirmative Relief" and the Claimant, Bank of America National Trust and Savings Association, filed its answer to said objections; and

The said objections to the claim came on for hearing before the Referee on January 12, 1948, the Receiver being represented by his attorneys Gendel & Chichester appearing by Martin Gendel, and the Claimant being represented by its attorneys Hugo A. Steinmeyer and John E. Walter; and

The Referee made and filed an Order Overruling Objections to Jurisdiction and consolidating Proceedings by which the "Petition for Order to Show Cause against Bank of America Re: Jacques Power Saw Co." filed herein by the Receiver on or about November 20, 1947, and "Objections to Claim of the Bank of America National Trust & Savings Association and Prayer for Affirmative Relief" filed herein by said Receiver on or about December 1, 1947, were consolidated for all purposes of hearing and decision; and

The parties having stipulated to the facts involved in said petitions by a stipulation in writing filed in said proceedings and the cause having been argued by respective counsel and submitted to the Referee and the Referee being fully advised in the premises having made and filed a "Memorandum Opinion on Claim of Bank of America";

Now, Therefore, the Referee does hereby make the following

### Findings of Fact

#### I.

It is true, as alleged in paragraph II of the Receiver's objections, that Bank of America National

Trust and Savings Association, hereinafter referred to as the Claimant, did file a proof of claim in the within debtor proceedings entitled "In Proceedings Under Chapter XI, Section 322 of the Bankruptcy Act, Proof of Partially Secured Debt," which proof of claim disclosed that said Claimant held partial security for the said indebtedness set forth therein. It is not true that said claim is a contingent claim. The allegations of the second paragraph of paragraph II of the said objections of the Receiver are untrue. The allegations of the third paragraph of paragraph II are untrue.

## II.

On or about February 18, 1946, Claimant loaned to the debtor in the above-entitled proceedings the sum of \$180,000 secured by a deed of trust upon the real property upon which the plant of the debtor was located. The said deed of trust provided by its terms that it should secure the repayment of said \$180,000 and any and all other indebtedness of the debtor to claimant whether then existing or thereafter created. Under date of February 18, 1946, Claimant entered into an agreement with said debtor by the terms of which Claimant agreed to extend credit to the debtor in the aggregate sum of \$500,000, to be repayable in annual installments on or before September 30, 1950. Thereafter on or about September 3, 1946, by an amendment to said agreement, Claimant agreed to increase the amount of credit to be extended to the debtor by an addi-

tional revolving credit of not to exceed \$450,000 until September 30, 1947. That thereafter Claimant loaned to said debtor the aggregate amount of \$600,000 pursuant to the terms of said credit agreement as amended.

### III.

That continuously from the date of said agreement the debtor regularly maintained its deposit accounts with Claimant as a bank of deposit. That continuously from the date of said agreement the debtor deposited with Claimant for collection and credit to the debtor's commercial deposit account notes and drafts accompanied by order bills of lading evidencing sales of merchandise by the debtor and in the regular course of business said drafts were collected and the proceeds credited to said commercial account. That during the period from June, 1946, until December, 1946, the amount of collection items deposited with Claimant averaged from \$40,000 to \$50,000 per month, and during the year 1947 up to August 20, 1947, the collection items so deposited with Claimant averaged approximately \$150,000 per month.

### IV.

On August 19, 1947, the debtor was in default in the payment of its indebtedness to Claimant; on said date Claimant offset from the various deposit accounts with the debtor the balances thereof in the aggregate amount of \$161,125.55. After the offset of said balances there was due and unpaid on account of the indebtedness of debtor to Claimant

the principal sum of \$601,482.80 and interest on the sum of \$159,300 from August 13 to August 19, 1947, inclusive, in the sum of \$139.39.

On August 20, 1947, the date of filing the Petition in the above-entitled proceeding, Claimant held in its hands notes or drafts drawn upon drawee purchasers in the amounts set opposite their respective names as described and set forth in pages 1 and 2 of Exhibit "A" to the Objections to Claim filed by the Receiver herein, and likewise held in its hands in each of said transactions order bills of lading representing the right to receive the merchandise described therein which was in course of shipment to the various drawee purchasers.

## V.

Subsequent to August 20, 1947, Claimant collected all of said notes and drafts and delivered the merchandise evidenced by the bills of lading to the drawee purchasers with the exception of the specific transactions hereinafter set forth:

(a) Subsequent to August 20, 1947, Hellgate Motors, Missoula, Montana, rejected payment of the draft for \$1,206.40 described in Exhibit "A"; Claimant caused the said merchandise to be diverted to another purchaser who paid the said draft and accepted said merchandise, and Claimant received a net amount of \$1,123.86 after deduction of additional freight charges;

(b) The Alton Automotive Sales & Service, Alton, Illinois, rejected payment of one draft for \$17,645.85 and Claimant caused said merchandise



to be diverted to another purchaser and received a net amount of \$16,995.95 after deducting additional freight charges thereon;

(c) Each of the following drawee-purchasers rejected drafts drawn upon them, to wit:

Drawee-Purchaser	Amount
Motor Scooter Dist. Co., Omaha, Nebraska .....	\$ 904.80
W. W. Warsaw, Waterloo, Iowa .....	17,646.00
Neil K. Hoak, Huron, Ohio .....	1,508.00
Beecroft & Lund, West Palm Beach, Florida.....	603.20
Beecroft & Lund, West Palm Beach, Florida.....	603.20
Paszamount Distr. Co., New Brunswick, New Jersey.....	4,222.40
Neil K. Hoak, Huron, Ohio .....	1,508.00
Harley-Davidson Sales, Gadsen, Alabama .....	1,508.00
Alton Automotive Sales & Service, Alton, Illinois .....	17,645.85
	<hr/>
	\$46,149.45

Thereafter Claimant caused the merchandise forwarded with said drafts consisting of 153 scooters to be returned to Pomona, California, and temporarily stored in the plant of the debtor under

the terms of an agreement in writing designated "Agreement and Order Concerning Possession and Sale of Motor Scooters" entered into between George T. Goggin, Receiver of Salsbury Motors, Inc., Debtor, and Claimant under date of September 22, 1947, and confirmed and approved by an order of the Honorable Hugh L. Dickson, Referee in the above-entitled proceedings, on September 23, 1947.

Claimant incurred liability for and paid freight and demurrage charges in the aggregate amount of \$4,931.47 in causing the said 153 motor scooters to be returned to the plant of the debtor at Pomona, California. Thereafter Claimant employed the debtor through the Receiver herein to perform work and services upon said motor scooters and paid to the Receiver the sum of \$1,461.86, representing the cost thereof. On or about October 16, 1947, Claimant was informed by the Receiver that sales of motor scooters had dropped off rapidly. In the latter part of November, 1947, the Receiver had not sold all of the motor scooters then on hand and was unable to find a purchaser for the 153 motor scooters held by Claimant. In the latter part of November Claimant endeavored to secure a purchaser for said 153 motor scooters and on December 2, 1947, sold the said 153 motor scooters for the sum of \$34,425, which was the best and only price Claimant was able to secure upon the sale thereof.

(d) The Motorette Corp., Buffalo, New York, rejected two drafts for \$4,775.00 each, each of which

was accompanied by bills of lading entitling the holder to 50 engines; that Claimant caused the said engines to be stored in Buffalo, New York, pending a possible sale thereof. Claimant has incurred and paid insurance and warehouse charges in the sum of \$82.01 on said engines, and further charges are accruing. At the date of hearing no purchaser for the said engines had been found.

## VI.

Claimant has received \$150,510.71 as the proceeds of collection items having a face amount of \$169,400.93 and said \$150,510.71 constitutes a reduction of Claimant's claim against the estate of the debtor.

## VII.

Included among the said collection items listed and described in Exhibit "A" to said Objections was a promissory note executed by the Jacques Power Saw Company of Denison, Texas, payable to the debtor in the principal amount of \$35,837 on July 16, 1947. The said promissory note was deposited by the debtor with the Claimant on or about July 8, 1947, for collection and credit to the commercial deposit account of the debtor and was transmitted to the correspondent of Claimant in Denison, Texas. Payment of said note was refused and it was returned to Claimant on or about July 31, 1947. On or about August 1, 1947, Claimant informed the debtor that said note had been returned and debtor instructed Claimant to re-submit the said note for collection.

On or about June 30, 1947, the debtor had issued on its books but had not completed carrying forward a credit memorandum of \$1,163.50 to said Jacques Power Saw Company to cover undelivered items which had originally been included in the amount of the note.

On August 21, 1947, the debtor delivered to Claimant a letter in words and figures as follows:

August 21, 1947

“Bank of America  
National Trust and Savings Association  
Pomona, California

Attn.: Mr. Farrand

Gentlemen:

On July 8, 1947, we deposited with you for collection a promissory note on which Jacques Power Saw Company of Denison, Texas, was the payor and Salsbury Motors, Inc., was the payee. The note was due July 16, 1947, and was in the principal amount of \$35,837.00.

Please be advised that your authority to collect said note is hereby terminated, effective immediately. Collection will be effected by direct dealings between ourselves and Jacques Power Saw Co.

Very truly yours,

SALSBURY MOTORS, INC.,

/s/ G. R. CASE,

General Manager.”

On or about August 22, 1947, the debtor agreed with the maker of the note that the credit memorandum of \$1,163.50 was a proper credit upon the note. On or about August 25, 1947, the maker of the note paid the net amount of \$34,653.50 to claimant's correspondent bank in Denison, Texas, upon surrender of the note and said funds were received by Claimant on or about August 27, 1947. Said sum of \$34,653.50 is part of the aggregate sum of \$150,510.71 received by Claimant as specified in paragraph VI of these findings.

### VIII.

None of the notes and drafts or bills of lading accompanying the same deposited by the debtor with Claimant as collection items during the course of the operation of the business of the debtor from the time of the loan agreement on February 18, 1946, to the date of filing the petition in the above-entitled proceedings was at any time pledged by the debtor to secure any indebtedness of the debtor to Claimant. No immediate credit was given by Claimant to the deposit accounts of the debtor upon the deposit of any of said collection items but all of said items were deposited with Claimant for collection and credit of the proceeds of the collection to the deposit account of the debtor when said collections were completed. During the period from February 18, 1946, to August 19, 1947, Claimant did, in the usual course of business, credit to the deposit account of the debtor, as and when received, the proceeds of all collection items in accordance

with the instructions of the debtor. In each of the collection items in the hands of Claimant on August 20, 1947, the debtor had issued and Claimant had accepted instructions to credit the proceeds of said collections when received to the commercial deposit account of the debtor.

### IX.

On or about September 8, 1947, Claimant duly filed its proof of claim against the estate of the above-named debtor for the principal sum of \$601,-482.80, together with interest therein as set forth.

Claimant has refused to turn over to the Receiver any of the notes, drafts or collection items hereinbefore referred to or the proceeds thereof.

### X.

To the extent that they may be inconsistent with the foregoing facts, the allegations of paragraphs IV, V, VI and VII of the Receiver's objections to claim are untrue.

### XI.

The allegations of paragraphs IV, VI and VII of Claimant's answer to objections to claim are true.

### XII.

The allegations of paragraph I of the separate defense of Claimant to the said objections are true.



And from the foregoing Findings of Fact, the Referee makes the following

### Conclusions of Law

#### I.

The Claimant is entitled to hold the said collection items that were in the hands of Claimant at the date of filing the Petition in the above-entitled proceedings under its claim of a general banker's lien and to hold the proceeds of such collections or the sale of the property represented thereby and apply the same upon the indebtedness of debtor to Claimant.

#### II.

The Receiver is not entitled to the possession of the collection items in the hands of the Claimant at the time of filing the Petition in the above-entitled proceedings and is not entitled to any of the proceeds of said collections.

#### III.

The receiver's objections to claim of Claimant should be overruled and said claim allowed for the principal sum of \$601,482.80, plus interest in the sum of \$139.39 as set forth in said claim, from which shall be deducted the sum of \$150,510.71 received by Claimant upon collection items in the hands of Claimant on August 20, 1947, and subject to the requirements that there shall be applied upon the balance of said indebtedness the net proceeds of the sale of the real property securing said indebtedness and the net amounts received by Claim-

ant upon the collection items described in Finding V(d) or the sale of the motors referred to therein.

#### IV.

Claimant is entitled to participate as an unsecured creditor in all dividends paid upon unsecured claims for the balance of its claim as so determined.

Now, Therefore, from the foregoing Findings of Fact and Conclusions of Law, the Referee makes the following

#### Order

It Is Hereby Ordered that the Receiver's "Petition for Order to Show Cause Against Bank of America Re: Jacques Power Saw Co." be and it hereby is denied; and

It Is Further Hereby Ordered that the objections of the Receiver to the claim of Bank of America National Trust and Savings Association heretofore filed herein be and the same are hereby overruled and the prayer for affirmative relief of said Receiver be and it is hereby denied; and

It Is Further Hereby Ordered that the claim of Bank of America National Trust and Savings Association filed herein is hereby allowed in the sum of \$601,482.80 principal, and interest in the sum of \$139.39, from which there shall be deducted the sum \$150,510.71 heretofore received by said Claimant from the proceeds of collection items in its possession at the date of filing the Petition in the above-entitled proceedings, and subject to the

requirement that the net proceeds of the sale of the real property securing said indebtedness and the net proceeds of the remaining uncollected collection items in the possession of said Claimant shall be applied in reduction of the balance of said claim; and

It Is Further Ordered that said Claimant shall be entitled to dividends upon the said claim at the same rate paid to unsecured creditors when the remainder of the security held by said Claimant has been liquidated and the proceeds applied upon the unpaid balance of said claim.

Done in open court this 22nd day of March, 1948.

/s/ HUGH L. DICKSON,  
Referee in Bankruptcy.

[Endorsed]: Filed Mar. 16, 1948.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 336, inclusive, contain full, true and correct copies of Petition of Debtor in Proceedings for an Arrangement; Statement of Affairs and Schedules A and B; and Approval of Debtor's Petition and Order of Reference and the original Referee's Certificate on Review; Notice of Motion

for Leave to File Petition for Intervention and Answer to Objections by Receiver to Claim of Northrop Aircraft, Inc.; Petition for Intervention and Answer to Objections by Receiver to Claim of Northrop Aircraft, Inc.; Debtor's Proposed Second Amended Plan of Arrangement; Order Confirming Debtor's Second Amended Plan of Arrangement Under Chapter XI of Bankruptcy Act; Consent by Creditor to Second Amended Plan of Arrangement; Petition of Receiver for Order Subordinating Claims of Bank of America; Supplement to Petition of Receiver for Order Subordinating Claims of Bank of America; Order to Show Cause re Bank of America; Agreement of Indemnity of Northrop Aircraft, Inc., and Order of Court Approving Same; Release and Satisfaction of Indemnity Agreement; Response to Order to Show Cause re Petition of Receiver for Order Subordinating Claims of Bank of America, etc.; Notice of Motion of Receiver to Reconsider Ruling on Motion of Bank of America Objecting to the Jurisdiction of the Bankruptcy Court re: Subordination Hearing; Points and Authorities in Support of Motion of Receiver to Reconsider Ruling of Referee on the Jurisdiction Point Involving the Subordination of Bank of America; Order on Petition of Receiver for Order Subordinating Claims of Bank of America and on Supplemental Petition Thereto; Objections of Receiver to Proposed Order on Petition of Receiver for Order Subordinating Claims of Bank of America and on Supplement to Petition Thereto;

Amended Petition of Receiver for an Order Subordinating Claims of Bank of America; Two Orders Extending Time to File Petition for Review; Petition for Review of Order of Referee Dated March 19, 1949, on Petition of Receiver for Order Subordinating Payment of Dividend on Claims of Bank of America; Proof of Claim of Northrop Aircraft, Inc.; Objections by Receiver to Claims of Northrop Aircraft, Inc., and Prayer for Affirmative Relief; Answer of Receiver to Motion of Bank of America for Leave to File Petition for Intervention and Answer to Objections; and Motion to Dismiss the Same; Order Granting Motion of Bank of America, etc., for Leave to File Petition for Intervention and Answer to Objections by Receiver to Claim of Northrop Aircraft, Inc.; Stipulation and Order; Proof of Claim of Bank of America, etc.; Points and Authorities in Support of Petition for Review of Order of Referee Dated March 19, 1949; re: Subordination of Payment of Dividends on Claims of Bank of America; Reply Memorandum of Authorities to Receiver's Petition to Review Order of March 19, 1949; Objections of Petitioner on Review to Proposed Order Denying Petition for Review in re Petition for Order Subordinating Claims of Bank of America; Order Denying Petition for Review in re Petition for Order Subordinating Claims of Bank of America; Notice of Appeal and Designation of of Record on Appeal which, together with Reporter's Transcripts of Proceedings on March 2, March 18 and April 6, 1949, transmitted herewith,

constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$10.50 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 10th day of March, A.D 1950.

EDMUND L. SMITH,  
Clerk.

[Seal] By /s/ THEODORE HOCKE,  
Chief Deputy.

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[Endorsed]: No. 12498. United States Court of Appeals for the Ninth Circuit. George T. Goggin, as Receiver of the Estate of Salsbury Motors, Inc., Debtor, Appellant, vs. Bank of America National Trust and Savings Association, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed March 11, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH  
APPELLANT INTENDS TO RELY

Appellant, George T. Goggin, Receiver of Salisbury Motors, Inc., a corporation, debtor, intends to rely on appeal on the following points:

1. The District Court and the Referee erred in holding that the Bankruptcy Court had no jurisdiction to grant the relief sought by the appellant in the Receiver's Petition, the Supplement thereto, and the Amended Petition to Subordinate the Claim of the Bank of America.

2. The District Court and the Referee erred in holding that the Receiver did not have the power or authority to file the aforesaid Petitions for Subordination of the Claim of the Bank of America.

3. The District Court and the Referee erred in holding that the aforesaid Petition, the Supplement thereto, and the Amended Petition failed to state claims upon which the relief therein requested could be granted.

4. The District Court and the Referee erred and abused their discretion in refusing to grant the Receiver leave to amend his pleadings after apparently holding that the original pleadings did not state facts sufficient to constitute a cause of action.

5. The District Court and the Referee erred and abused their discretion in overruling the ob-

jections of the Receiver to the proposed forms of order on the Receiver's Petition and the Referee erred in signing said proposed order without considering the objections of the Receiver thereto.

Dated this 10th day of March, 1950.

GENDEL & RASKOFF.

By /s/ H. MILES RASKOFF,  
Of Counsel for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed Mar. 11, 1950.

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United States Court of Appeals  
For the Ninth Circuit

No. 12498

GEORGE T. GOGGIN, Receiver of Salsbury  
Motors, Inc., a Corporation, Debtor,  
Appellant,

vs.

BANK OF AMERICA NATIONAL TRUST &  
SAVINGS ASSOCIATION, a National Bank-  
ing Association,

Appellee.

APPELLANT'S DESIGNATION OF RECORD  
TO BE PRINTED

Appellant, George T. Goggin, Receiver of Salsbury Motors, Inc., a corporation, debtor, does here-

by designate the following portions of the record, proceedings and evidence certified to the Clerk of this Court by the Clerk of the District Court in connection with the within appeal, as material to the consideration of the appeal. (The page numbers following each item hereinafter designated, refer to the page of the record certified to this Court by the Clerk of the District Court at which the document can be found:)

1. Petition of Debtor in proceedings for an arrangement, without the exhibits thereto. Page 2.

2. Statement of Affairs (being Exhibit 2 to the Petition of Debtor). Page 9.

3. Summary Sheet of Schedules A and B. Page 16.

4. Approval of Debtor's Petition and Order of Reference under Section 322 of the Bankruptcy Act. Page 35.

5. Referee's Certificate of Review. Page 36.

6. Debtor's Proposed Second Amended Plan of Arrangement. Page 88.

7. Order of Referee confirming Debtor's Second Amended Plan of Arrangement. Page 97.

8. Consent by Creditor to Second Amended Plan of Arrangement. Page 102.

9. Petition of Receiver for Order Subordinating Claims of Bank of America. Page 104.

10. Supplement to Petition of Receiver for Order Subordinating Claims of Bank of America. Page 109.

11. Order to Show Cause re Bank of America. Page 113.

12. Agreement of Indemnity of Northrop Aircraft, Inc., and Order of Court Approving same. Page 114.

13. Release and Satisfaction of Indemnity Agreement. Page 122.

14. Response to Order to Show Cause. Page 125.

15. Notice of Motion of Receiver to Reconsider Ruling on Motion of Bank of America. Page 128.

16. Order of Referee on Petition for Order Subordinating Claims. Page 150.

17. Objections of Receiver to proposed Order Subordinating Claims, etc. Page 153.

18. Amended Petition of Receiver for Order Subordinating Claims of Bank of America. Page 174.

19. Petition for Review of Order, etc. Page 189.

20. Proof of Claim of Bank of America. Page 246.

21. Objections of Receiver to proposed Order Subordinating Claims, etc. Page 325.

22. Order of Judge Denying Petition for Review, etc. Page 329.

23. Notice of Appeal. Page 332.

24. Designation of Record on Appeal. Page 334.

The following portions of the Transcripts of Hearings:

A. Transcript of hearing re Objections to Claim of Bank of America before Referee in Bankruptcy of March 2, 1949, beginning at Line 17, Page 63 of

said transcript and ending at Line 3, Page 66 of said transcript.

B. Transcript of hearing re Motion of Receiver to Reconsider ruling on Motion of Bank of America objecting to the jurisdiction of the Bankruptcy Court before the Referee in Bankruptcy on March 18, 1949, commencing at Line 2, Page 30 thereof, and ending at Line 4, Page 32 of said transcript.

C. Transcript of hearing re Objections to Proposed Order on Petition of Receiver for Order Subordinating Claims of Bank of America before the Referee in Bankruptcy on April 6, 1949, in its entirety, consisting of the full seven pages of said transcript.

In addition to the foregoing portions of the record on appeal, Appellant designates for printing this Designation of Record and the Statement of Points upon which Appellant intends to rely, filed with this Court simultaneously herewith.

Appellant hereby requests that all of the aforementioned portion of the records, proceedings and evidence before the District Court and this Court, be printed.

Dated this 10th day of March, 1950.

GENDEL & RASKOFF,  
By /s/ H. MILES RASKOFF,  
Of Counsel for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed Mar. 11, 1950.

[Title of Court of Appeals and Cause.]

APPELLEE'S DESIGNATION OF RECORD  
TO BE PRINTED

Appellee Bank of America National Trust and Savings Association does hereby designate the following portions of the record, proceedings, and evidence certified to the Clerk of this Court by the Clerk of the District Court in connection with the within appeal as material to the consideration of the appeal:

1. That portion of statement of counsel for Appellant contained in transcript of hearing re objections to claim of Bank of America before Referee in Bankruptcy on March 2, 1949, beginning at Line 13, Page 31 of said transcript and ending at Line 3, Page 32 of said transcript.

2. Findings of Fact, Conclusions of Law and Order allowing claim dated March 22, 1948, being a part of the record on appeal in this Court in Case No. 12206, George T. Goggin, Receiver of the Estate of Salsbury Motors, Inc., Appellant, v. Bank of America National Trust and Savings Association, Appellee, being printed at Pages 80 to 92, inclusive, of the printed transcript of record in said Case No. 12206.

Appellee designates and requests the Honorable Clerk of this Court to reprint as a part of the record on appeal in Case No. 12498 the aforesaid Findings of Fact, Conclusions of Law and Order



allowing claim printed in the record of Case No. 12206 at Pages 80 to 92, inclusive.

Appellee further designates for printing this designation of record.

Appellee hereby requests that all of the aforesaid portions of the records, proceedings, and evidence before the District Court and this Court, in addition to the portions designated by the Appellant, be printed.

Dated this 30th day of March, 1950.

HUGO A. STEINMEYER and  
ROBERT H. FABIAN,

By /s/ ROBERT H. FABIAN,  
Attorneys for Appellee.

Affidavit of service by mail attached.

[Endorsed]: Filed Mar. 31, 1950.

